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THE

MARINE INSURANCE ACT, 1906

(6 Edw. 7, c. 41).

WITH NOTES

And an Appendix

CONTAINING THE MATERIAL PROVISIONS OF THE

STATUTES RELATING TO THE STAMPING OF MARINE POLICIES.

BY

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PREFACE.

THE Marine Insurance Act, although entitled "An Act to Codify the Law relating to Marine Insurance," is not an exhaustive summary of marine insurance law. Indeed, it would not have been possible to embody in a codifying statute all the rules, with their qualifications, which relate to so wide a subject. In this Work, which is no more than an annotated edition of the new Act, the Authors have explained or commented on its provisions whenever they have thought that their comments would assist those who have to study or apply it. They have also cited the most important cases on which those provisions are based; for, notwithstanding Lord Herschell's dictum that any point specifically dealt with in a codifying Act should, generally speaking, be ascertained by interpreting the language used instead of roaming over a vast number of authorities, the legal practitioner will usually desire to have a reference to the cases on which the provisions of the Act are based, and, in order to appreciate their meaning, will often find it necessary to consult the previous

decisions. The Authors have also systematically inserted references to their own (the Seventh and latest) Edition of Sir Joseph Arnould's Treatise, which was published in 1901, and deals exhaustively with the subject. Whenever, in their opinion, a change of the law has, or may possibly have, been effected by the Act, they have thought it advisable to draw attention to that fact. They have inserted in the Appendix all the statutory provisions now in force relating to the stamping of marine policies.

E. L. DE H.
R. I. S.

THE TEMPLE,
February, 1907.

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MARINE INSURANCE ACT, 1906.

6 Ed. 7, c. 41.

An Act to codify the Law relating to Marine Insurance.

[21st December, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Marine Insurance.

Sect. 1. Marine insurance defined.

1.—A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

The contract must be expressed in a written instrument which is called a *policy* (*a*).

The insurer is usually called the *underwriter*, because he is the person who signs his name at the foot of the policy (*b*).

The property or thing insured is in the Act called the *subject-matter insured* (*c*).

(*a*) See ss. 22, 23, *post*, pp. 29, 30; Stamp Act, 1891, s. 93, *post*, p. 109. For the different kinds of policies, see ss. 25, 27—29, *post*, pp. 32, 35—38.

(*b*) Arnould, § 26.

(*c*) See s. 6 (1), *post*, p. 10; and cf. s. 3, *post*, p. 3, in which a marine adventure is said to be the "subject of a contract of marine insurance." As to the distinction between these two terms, see *per* Brett, L. J., in *Rayner* v. *Preston* (1881), 18 Ch. D. 1, at p. 9; 50 L. J. Ch. 472; Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 5.

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The title or interest which the assured has in the subject of the insurance is called his *insurable interest* (*d*).

The consideration for which the insurer undertakes to indemnify the assured is called the *premium* (*e*).

The definition of marine insurance in this section embodies the fundamental principle that the contract is one of indemnity (*f*). It is, however, as the judges said in *Irving* v. *Manning* (*g*), not a perfect contract of indemnity, *i.e.*, it happens in certain circumstances that the assured recovers more or less than the pecuniary loss which he has actually sustained. This may be the result of the valuation of the subject-matter insured in a valued policy (*h*), this valuation being conclusive against both parties as to the value of the subject-matter insured (*i*). Again, under unvalued policies (*k*) on freight the assured may recover more than an indemnity, as in case of a loss he is entitled to be paid the gross freight (*l*). Similarly in unvalued policies on ship the assured, as Mr. McArthur has pointed out, recovers more than his real loss when the freight is also insured (*m*). On the other hand, in open policies on goods, the assured generally recovers less than his actual loss (*n*).

Mixed sea and land risks.

2. (1.) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2.) Where a ship in course of building, or the launch of a

(*d*) S. 5, *post*, p. 8.

(*e*) In insurances by mutual insurance associations the consideration or premium is the liability of the member to pay calls in respect of the losses of the other members: see *per* Lord Esher, *Lion Ins. Ass.* v. *Tucker* (1883), 12 Q. B. D. 176, 187; 53 L. J. Q. B. 185.

(*f*) See Arnould, § 3.

(*g*) (1847), 1 H. L. C. 287, 307.

(*h*) "A valued policy is a policy which specifies the agreed value of the subject-matter insured": s. 27 (2), *post*, p. 35.

(*i*) S. 27 (3), *post*, p. 35. See Arnould, §§ 356, 357, 1223.

(*k*) An unvalued policy, usually called an open policy, is one which does not specify the value of the subject-matter insured: s. 28, *post*, p. 37.

(*l*) S. 16 (2), *post*, p. 21. See Arnould, § 337.

(*m*) S. 16 (3), *post*, p. 22; McArthur, Mar. Ins. 2nd ed. p. 68; Arnould, § 333, note (*b*).

(*n*) S. 16 (3), *post*, p. 22; Arnould, §§ 337, 338.

ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto (*o*), but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Generally speaking, the underwriter of a marine policy insures only against marine risks (*p*); but where there was a usage by which the ship's furniture or stores were regularly landed at a certain stage of the voyage, they were held to be protected when thus put on shore (*q*).

Policies on goods often contain a "warehouse to warehouse" clause, which is expressed to cover all risks from the warehouse of the consignor until safe delivery in the warehouse of the consignee (*r*). Frequently, also, goods are insured by the same policy for a voyage partly by sea, and partly by land (*s*), or by inland navigation (*t*).

Marine adventure and maritime perils defined.

3.—(1.) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(*o*) For the construction of a policy against lighterman's risks in the form of a marine policy, see *Joyce* v. *Kennard* (1871), L. R. 7 Q. B. 78; 41 L. J. Q. B. 17; for that of a policy on a river voyage, see *Apollinaris Co.* v. *Nord Deutsche Ins. Co.*, [1904] 1 K. B. 252; 73 L. J. K. B. 62.

(*p*) Arnould, §§ 460, 507.

(*q*) *Pelly* v. *Royal Exchange Ass. Co.* (1757), 1 Burr. 341; *Brough* v. *Whitmore* (1791), 4 T. R. 206.

(*r*) See Arnould, § 447, note (*c*). For a clause by which goods were covered while temporarily placed on a quay, see *Ide* v. *Chalmers* (1900), 5 Com. Cas. 212.

(*s*) See, *e.g.*, *Rodocanachi* v. *Elliott* (1873), L. R. 9 C. P. 518; 43 L. J. C. P. 255; *Simon, Israel & Co.* v. *Sedgwick*, [1893] 1 Q. B. 303; 62 L. J. Q. B. 163; *Hyderabad (Deccan) Co.* v. *Willoughby*, [1899] 2 Q. B. 530; 68 L. J. Q. B. 862; *Robinson Gold Mining Co.* v. *Alliance Ins. Co.*, [1904] A. C. 359; 73 L. J. K. B. 898; *Schloss* v. *Stevens*, [1906] 2 K. B. 665; 75 L. J. K. B. 927.

(*t*) See *Apollinaris Co.* v. *Nord Deutsche Ins. Co.*, *supra*.

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(2.) In particular there is a marine adventure where—

(a) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";

(b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements is endangered by the exposure of insurable property to maritime perils;

(c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seisures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy (*u*).

S. 3 (1) gives effect to the principle that no property or interest at risk in a marine adventure can be the subject of a valid insurance if the course of trade, or the voyage, in which it is so exposed to risk, contravene the laws of the country of the insurer (*x*). Not only does the assured impliedly warrant that the adventure insured is a lawful one, and that, so far as he can control the matter, it will be carried out in a lawful manner (*y*); but the insurer, even though aware of the illegal nature of the adventure, can repudiate liability (*z*).

An insurance, as is implied in this section, may be effected either upon some property physically exposed to the risk of loss

(*u*) The "maritime" perils enumerated in s. 3 (2), are those specified in the body of the policy usually called Lloyds' Policy, which is set out in Schedule I., *post*, p. 99. See as to these perils, Arnould, Part III., c. 2, and with reference to perils of the seas, pirates, thieves, restraints of princes, barratry, and "any other perils," Schedule I., rules 7—12, *post*, pp. 103—105.

(*x*) Arnould, § 734 *et seq.*

(*y*) See s. 41, *post*, p. 52.

(*z*) Arnould, § 740.

or damage, or in respect of some right which may be affected or some liability which may be incurred by reason of the exposure of such property to maritime perils; but in order that the assured may recover he must have an insurable interest in the subject-matter insured (*a*).

This subject-matter is usually described very concisely in the policy. Thus the insurance may be expressed to be "on ship," "on goods," "on freight" (*b*), "on profits on goods," "on profit on charter" (*c*), "on passage money," "on commissions," "on disbursements" (*d*), &c. Generally speaking the interest of the assured need not be specified (*e*). For instance, the mortgagee of a ship may insure his interest by a policy "on ship" (*f*), a carrier of goods may insure his liability under his contract of carriage by a policy "on goods" (*g*), an underwriter may effect a re-insurance in the same terms as the original assured (*h*). Where, however, an insurance is effected by a lender on bottomry or respondentia, the usage has been to specify the nature of his interest (*i*).

A share in a company owning property exposed to maritime perils can apparently not be insured; for the share cannot itself be exposed to these perils, although it may be depreciated by the loss of or by damage to the property of the company (*k*);

(*a*) See as to insurable interest, ss. 4—15, *post*, pp. 6—20.

(*b*) See *post*, pp. 20, 21, 106, what is covered by an insurance "on ship," p. 107, what can be insured as "goods," pp. 97, 107, what can be insured as "freight."

(*c*) See *Asfar* v. *Blundell*, [1896] 1 Q. B. 123; 65 L. J. Q. B. 138.

(*d*) For what may be covered by a policy on "disbursements," see *Roddick* v. *Indemnity Mutual Mar. Ins. Co.*, [1895] 2 Q. B. 380; 64 L. J. Q. B. 733; *Buchanan* v. *Faber* (1899), 4 Com. Cas. 223; *Lowther* v. *Black* (1900), 6 Com. Cas. 5; *Moran* v. *Uzielli*, [1905] 2 Q. B. 555; 74 L. J. K. B. 494; Arnould, §§ 246, 247.

(*e*) S. 26 (2), *post*, p. 33.

(*f*) *Irving* v. *Richardson* (1831), 2 B. & Ad. 193; 9 L. J. (O. S.) K. B. 225; Arnould, § 298.

(*g*) *Crowley* v. *Cohen* (1832), 3 B. & Ad. 478; 1 L. J. (N. S.) K. B. 158.

(*h*) *Mackenzie* v. *Whitworth* (1875), 1 Ex. D. 36; 45 L. J. Ex. 233.

(*i*) See note to s. 26 (2), *post*, p. 33; Arnould, § 243.

(*k*) See *per cur.*, *Paterson* v. *Harris* (1861), 1 B. & S. 354, 355; 30 L. J. Q. B. 361; Arnould, §§ 249, 307. A shareholder cannot insure the property of the company, for another reason, viz., that he has no interest therein: see *post*, p. 9.

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but it has been held that the interest of a shareholder in a marine adventure, such as the laying of the Atlantic Cable, can, if properly described, be protected by insurance (*l*).

The wages of master mariners and seamen are insurable (*m*).

Insurable Interest.

Avoidance of wagering or gaming contracts.

4.—(1.) Every contract of marine insurance by way of gaming or wagering is void.

(2.) A contract of marine insurance is deemed to be a gaming or wagering contract—

(a) Where the assured has not an insurable interest (*n*) as defined by this Act (*o*), and the contract is entered into with no expectation of acquiring such an interest; or

(b) Where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term (*p*):

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer (*q*).

This section reproduces and extends the provisions of 19 Geo. 2, c. 37, which is repealed by s. 92 of the Act.

(*l*) *Wilson* v. *Jones* (1867), L. R. 2 Ex. 139; 36 L. J. Ex. 78.

(*m*) S. 11, *post*, p. 15.

(*n*) This is apparently intended to apply at the time when the contract is made, although by s. 6 (1), *post*, p. 10, the assured need not have an interest when the insurance is effected.

(*o*) See s. 5, *post*, p. 8.

(*p*) *E.g.*, "full interest admitted": *Berridge* v. *Man On Ins. Co.* (1887), 18 Q. B. D. 346; 56 L. J. Q. B. 223. Cf. *Grant* v. *Parkinson* (1782), 2 Park, Ins. 8th ed. 561, where the words "without any other voucher than the policy," following the valuation, were held to apply to the valuation, not to the interest, and to be mere surplusage.

(*q*) This proviso gives effect to the opinion of nine of the judges in *Lucena* v. *Craufurd* (1806), 2 B. & P. N. R. at p. 310. There seems to be no possibility of salvage in insurances on profits or commissions.

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At the time when the Act of Geo. II. was passed, it had been established (1) that a policy with a clause by which the underwriter agreed not to require any proof of interest was valid at common law, and that the clause was binding on the assured; (2) that a policy which did not contain such a clause was (as it still is) a contract of indemnity only, on which the assured could not recover without proof of interest (*r*). A clause of this kind is usually called a "p.p.i." (policy proof of interest) clause, and a policy containing it is called a "p.p.i." policy," or an *honour* or *wager policy* (*s*). These wager policies had become so common and had done so much to promote gaming, that 19 Geo. II. c. 37 declared all policies to be null and void which contained a clause of the kind enumerated in s. 4 (2) (b), or which were made by way of gaming or wagering. That Act, however, only applied to insurances on British ships and their cargoes (*t*), whereas the present Act contains no such limitation. Moreover, it was never extended to Ireland (*u*).

"P.p.i." policies, although often a cloak for gambling, are frequently effected by persons who have a real interest in the subject-matter insured (*x*). It is, therefore, doubtful whether a "p.p.i." policy is void under the Gaming Act, 1845 (and therefore whether the Gaming Act, 1892, has any application to it), if the assured has or expects to acquire a real interest, so that it is clear that he did not intend to make a wager (*y*). If such a policy has hitherto not been within the Gaming Act, 1845, is it now within that Act by reason of s. 4 (2) of the present Act, which declares that every "p.p.i." policy is deemed to be

(*r*) See Arnould, § 311; *per* Lord Eldon, in *Lucena* v. *Crauford* (1806), 2 B. & P. N. R. 321; *Cousins* v. *Nantes* (1811), 3 Taunt. 513.

(*s*) Arnould, § 312.

(*t*) Its application was not, however, restricted to insurances on "ship" or "goods." See *Allkins* v. *Jupe* (1877), 2 C. P. D. 375; 46 L. J. C. P. 824 (policy on "profits and commissions"); *Berridge* v. *Man On Ins. Co.* (1887), 18 Q. B. D. 346; 56 L. J. Q. B. 223 (policy on "cash advances"); Arnould, § 319.

(*u*) See *Keith* v. *Protection Ins. Co. of Paris* (1882), 10 L. R. Ir. 51.

(*x*) See *per* Kennedy, J., in *Gedge* v. *Royal Exchange Ass. Corporation*, [1900] 2 Q. B. 214, 223.

(*y*) See Arnould, § 315. Sir Joseph Arnould seems to have thought that "p.p.i." policies are void under the Gaming Act, 1845: see Arnould, 2nd ed. vol. 1, p. 333 n.

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a gaming or wagering contract? It is apprehended that this provision does not enlarge the operation of the Gaming Acts.

There is authority for saying, although it has never been necessary to decide the point, that a valued policy may be void as being by way of gaming or wagering, notwithstanding that the assured has an insurable interest, if there be an enormous disproportion between the real value of the thing insured and its valuation in the policy (z). It is submitted that sub-s. (2) of s. 4 is not exhaustive, and has therefore not the effect of preventing such a policy from being void under sub-s. (1).

Insurable interest defined.

5.—(1.) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2.) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

S. 5 (2) does not profess to be an exhaustive definition of an insurable interest. The description of an insurable interest which is usually quoted as an authoritative exposition of the legal doctrine is Mr. Justice Lawrence's, in *Lucena* v. *Crauford* (a). "A man," said the learned judge, "is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it; and whom it importeth that its condition as to safety or other quality should continue. Interest does not necessarily imply a right to the whole or part of the thing, nor necessarily and exclusively that which may be the subject of privation, but the having some relation to, or concern in, the subject of the insurance; which relation or concern, by the happening of the perils insured against, may be so affected as to produce a damage, detriment or prejudice to the

(z) See *per* Lord Mansfield in *Lewis* v. *Rucker* (1761), 2 Burr. 1171; Memorandum of Willes, J., cited by Mathew, J., in *Herring* v. *Janson* (1895), 1 Com. Cas. 178; Arnould, §§ 319, 342.

(a) (1806), 2 B. & P. N. R., at p. 302.

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person insuring. And where a man is so circumstanced with respect to matters exposed to certain risks and dangers as to have a moral certainty of advantage or benefit but for those risks and dangers, he may be said to be interested in the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction."

The simplest instance of an insurable interest is the interest of the legal owner of a chattel; but there may be trusts, contracts, liens or mortgages by reason of which independent insurable interests in property at risk exist in several persons at the same time (*b*). Thus, the owner of a cargo, a consignee who has a lien on it for advances (*c*), the insurer of the cargo (*d*), and the shipowner who carries it (and is liable under his contract of carriage for loss or damage (*e*)), have all separate insurable interests.

There may, as the language of sub-s. (2) implies, be an insurable interest in an adventure without an insurable interest in any of the property at risk. Thus, a shareholder in a company has, it is apprehended, no insurable interest in the property of the company, which is a legal entity independent of its shareholders (*f*); but the Court of Exchequer Chamber held in one case that a shareholder in the Atlantic Telegraph Company had an insurable interest in the adventure of laying the cable, which he could protect by a properly worded policy (*g*). Again, an agent to whom goods are consigned for sale has an insurable

(*b*) Arnould, §§ 255, 333.

(*c*) *Ebsworth* v. *Alliance Mar. Ins. Co.* (1873), L. R. 8 C. P. 596; 42 L. J. C. P. 305. See s. 14 (2), *post*, p. 17.

(*d*) S. 9 (1), *post*, p. 13.

(*e*) *Crowley* v. *Cohen* (1832), 3 B. & Ad. 478; 1 L. J. (N. S.) K. B. 158; *Cunard SS. Co.* v. *Marten*, [1903] 2 K. B. 511; 72 L. J. K. B. 754.

(*f*) See *per* Willes, J., in *Wilson* v. *Jones* (1867), L. R. 2 Ex. 139, 144; 36 L. J. Ex. 78. See also *R.* v. *Arnaud* (1846), 9 Q. B. 806; 16 L. J. Q. B. 50; *Myers* v. *Perigal* (1852), 2 De G. M. & G. 599; 22 L. J. Ch. 431; *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; 66 L. J. Ch. 35; *Harburg India Rubber Comb Co.* v. *Martin*, [1902] 1 K. B. 778; 71 L. J. K. B. 529; *Janson* v. *Driefontein Consolidated Mines, Ltd.*, [1902] A. C. 484; 71 L. J. K. B. 857. Cf. *per* Smith, M. R., *S. C.* in C. A., [1901] 2 K. B. 419, 426, 427; 70 L. J. K. B. 881. In *Paterson* v. *Harris* (1862), 2 B. & S. 814; 31 L. J. Q. B. 277, the interest was not traversed.

(*g*) *Wilson* v. *Jones*, *supra*.

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interest in the commission which he will earn if they arrive in safety (*h*); and a shipbroker to whom, by agreement, a ship is addressed has an insurable interest in his brokerage during the voyage of the ship to the port where he will earn it (*i*).

Yet, notwithstanding the wide language used by Lawrence, J., in the passage quoted above, with reference to "a moral certainty of advantage or benefit," it is no doubt correct to say that in general an expectation of gain or loss which is not founded upon some legal right or liability relating to the property at risk does not give rise to an insurable interest (*k*). Thus, a commission agent has no insurable interest in his expected commissions on the sale of goods, when there is no agreement under which the goods are consigned to him (*l*).

When interest must attach.

6.—(1.) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected (*m*):

(*h*) *Per* Lord Kenyon, *Flint* v. *Le Mesurier* (1796), 2 Park, Ins. 8th ed. 563; Arnould, § 297.

(*i*) *Watts* v. *Bacon* (1900), Arnould, § 297.

(*k*) See *Knox* v. *Wood* (1808), 1 Camp. 543 (commissions on sale of goods); *Stockdale* v. *Dunlop* (1840), 6 M. & W. 224; 9 L. J. Ex. 83 (profit on goods); *Buchanan* v. *Faber* (1899), 4 Com. Cas. 223 (brokerage and ship's husband's commission): *per* Walton, J., in *Moran* v. *Uzielli*, [1905] 2 K. B. 555, 562; 74 L. J. K. B. 494; Arnould, §§ 257, 297. The one exception for which there is clear legal authority is the insurable interest of captors in their prizes by reason of the invariable practice of the Crown to grant them the captured property: *Le Cras* v. *Hughes* (1782), 3 Dougl. 81; 2 Park, Ins. 568; but the authority of this case has been much shaken: see *per* Lord Eldon in *Lucena* v. *Craufurd* (1806), 2 B. & P. N. R. 323; *per* Lord Ellenborough in *Routh* v. *Thompson* (1809), 11 East, 434; *per* Tindal, C. J., in *Devaux* v. *Steele* (1840), 6 Bing. N. C. 358, 370, 371; Arnould, §§ 301—305. An additional sub-section to s. 5 of the Marine Insurance Bill declared that "a prospect or possibility of loss or gain, which is not founded on any right or liability in, or in respect of, the subject-matter insured, is not insurable," but it was struck out in Committee. In *Moran* v. *Uzielli*, *supra*, Walton, J., held that a lender's right to institute an action *in rem* against a ship created an insurable interest. In *Manchester Liners* v. *British & Foreign Mar. Ins. Co.* (1901), 7 Com. Cas. 26, 33, the same learned judge expressed the opinion that a shipowner can insure his interest in the use of his ship, apart from any contract for freight.

(*l*) See *Knox* v. *Wood*, and *Buchanan* v. *Faber*, *supra*.

(*m*) Arnould, § 258; *Rhind* v. *Wilkinson* (1810), 2 Taunt.

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Provided that where the subject-matter is insured "lost or not lost," the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2.) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss (*n*).

The proviso to sub-s. 1 enables a party who has acquired an interest in insurable property after the commencement of the risk to recover for any loss sustained before his interest began, when the loss in question falls upon him (*o*). If, however, the assured effects an insurance with knowledge of a loss and without disclosing his information to the underwriter, the latter can avoid the contract (*p*).

Defeasible or contingent interest.

7.—(1.) A defeasible interest is insurable, as also is a contingent interest.

(2.) In particular where the buyer of goods has insured

237; but see s. 4, *ante*, p. 6, as to gaming or wagering contracts. It is common practice to effect insurances before an insurable interest is acquired.

(*n*) *Anderson* v. *Morice* (1875—6), L. R. 10 C. P. 609, 620, 623; 1 App. Cas. 713, 726, 733, 749; 46 L. J. C. P. 11. In this case the assured bought a cargo of rice under a contract by which the property did not pass until the whole cargo was shipped. The ship was lost with part of the cargo on board, and it was held that the assured, who afterwards paid for the lost cargo, could not recover from the underwriters. Sub-s. (2) seems not to be consistent with the proviso in s. 1.

(*o*) *Sutherland* v. *Pratt* (1843), 11 M. & W. 296; 12 L. J. Ex. 235 (purchase of a cargo at sea which had already sustained damage). Generally speaking, if goods at sea have been totally lost before the contract of sale is made, the contract is inoperative, and therefore the buyer never has an insurable interest: see 2 Duer, 7; *per* Coleridge, J., *Hastie* v. *Couturier* (1853), 9 Exch. 109; 22 L. J. Ex. 299. *Aliter*, it is submitted, where the contract is so expressed that the risk of the goods having been lost before the sale is taken by the buyer: see Arnould, § 13, note (*p*), and the remarks on *emptio spei* in Chalmers' Sale of Goods Act, note to s. 5.

(*p*) See s. 18, *post*, p. 23.

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them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise (*q*).

An example of a defeasible interest is the right of captors to their prize under the Prize Acts, which was held to be an insurable interest before condemnation, though defeasible by the release of the Crown, or by sentence of restoration (*r*).

It is difficult to say precisely what is meant by a "contingent interest." The expression occurs in the opinion of seven of the judges in *Lucena* v. *Craufurd*, and they seem, from a remark previously made, to have considered the interest of a captor as a contingent one (*r*). It may be suggested that a liability gives rise to a contingent interest (*s*), or that the interest of a shipowner in the freight to be earned under a charter party which contains a cancellation clause, or a clause providing that the contract is subject to the arrival of the vessel at the loading port before a given date, is a contingent one while she is on her way thither.

The expression in sub-s. (2), "where the buyer of goods has insured them, he has an insurable interest," is open to the criticism that the fact of having insured cannot create an insurable interest. It is because a party has an insurable interest that he can effect a valid insurance (*t*).

Partial interest.

8. A partial interest of any nature is insurable.

The term "partial interest" may be construed as meaning an

(*q*) See *Sparkes* v. *Marshall* (1836), 2 Bing. N. C. 761; 5 L. J. (N. S.) C. P. 286; and the remarks of Lord Chelmsford and Lord Hatherley on this case in *Anderson* v. *Morice* (1876), 1 App. Cas. 713, 727, 735; 46 L. J. C. P. 11; *Colonial Ins. Co. of New Zealand* v. *Adelaide Mar. Ins. Co.* (1886), 12 App. Cas. 128, 140; 56 L. J. P. C. 19.

(*r*) See *Lucena* v. *Craufurd* (1806), 2 B. & P. N. R. p. 295.

(*s*) See Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 14, where it is said that re-insurance is a good example of a contingent interest. It seems, however, unnecessary, in view of the language of s. 5 (2), to consider whether the interest arising from a liability is a contingent one; and re-insurance is specifically dealt with in s. 9, *infra*.

(*t*) See Arnould, § 265; Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 11.

undivided or "hotchpot" interest in the subject-matter insured (*u*), *e.g.*, the interest of a part-owner (whether joint tenant or tenant in common) of insurable property (*v*), or the interest of one of a body of adventurers in their common adventure (*x*). It may also be construed more widely so as to cover other interests which do not extend to the full value of the subject-matter insured, *e.g.*, the interest of a party having a mortgage or lien on insurable property, in respect of the amount of his lien (*y*).

Re-insurance.

9.—(1.) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.

(2.) Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance (*z*).

Re-insurances were prohibited by 19 Geo. 2, c. 37, s. 4, unless the insurer were insolvent, bankrupt or dead, but this was repealed and re-insurances made lawful by 27 & 28 Vict. c. 56, s. 7. It is not necessary, as a matter of law, that the policy should be expressed to be a re-insurance (*a*), though policies of re-insurance usually contain a clause (called the re-insurance clause) in the following terms: "Being a re-insurance, subject

(*u*) See *Robertson* v. *Hamilton* (1811), 14 East, 522; *Inglis* v. *Stock* (1885), 10 App. Cas. 263, 274; 54 L. J. Q. B. 582 (interest of a purchaser of goods in a cargo shipped to fulfil his contract and one with another purchaser, no appropriation having been made at the time of the loss).

(*v*) Thus a person may be the registered owner of one or more sixty-fourth shares in a ship, in which case he and the owners of the remaining sixty-fourth shares are tenants in common of the ship; or he and not more than four other persons may be registered as joint owners of a ship or of any number of the shares. See the Merchant Shipping Act, 1894, s. 5. In either case he can protect his interest by a separate insurance.

(*x*) *Wilson* v. *Jones* (1867), L. R. 2 Ex. 139; 36 L. J. Ex. 78.

(*y*) See Arnould, §§ 292, 298; s. 14 (1), *post*, p. 17.

(*z*) See *per* Mathew, L. J., in *Nelson* v. *Empress Ass. Corporation* (1905), 10 Com. Cas. 237, 240; Arnould, § 324.

(*a*) See s. 26 (2), *post*, p. 33; *Mackenzie* v. *Whitworth* (1875), 1 Ex. D. 36; 45 L. J. Ex. 233; Arnould, § 323.

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to the same clauses and conditions as the original policy (*b*), and to pay as may be paid thereon" (*c*).

Sub-s. (2) embodies the principle that the contract of re-insurance is totally distinct from the original insurance. Hence the original assured has no claim against the re-insurer, nor to any money paid by him to the original insurer; and the re-insurer is bound to pay the whole amount to the trustee of an insolvent insurer, and not merely the dividend which the original assured receives from the estate (*d*).

Bottomry.

10.—The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

By the contract of bottomry the owner or master of a ship undertakes to repay the loan (usually with maritime interest) if the ship terminates her voyage successfully, and the lender has a maritime lien on the ship (and on the cargo and freight if they have also been hypothecated) for the amount due to him. If, however, the ship becomes an absolute total loss, the lender loses all his money. Similarly, respondentia is a loan upon the security of the cargo, to be repaid with the agreed interest if the cargo arrives safely, not to be repaid if it be lost (*e*).

The authority of the master to raise money on bottomry or respondentia arises only in case of necessity; the loan must be

(*b*) See as to the meaning of these words, *Joyce* v. *Realm Ins. Co.* (1872), L. R. 7 Q. B. 580; 41 L. J. Q. B. 356; *Franco-Hungarian Ins. Co.* v. *Merchants' Mar. Ins. Co.* (1888), Arnould, § 328; *Marten* v. *Nippon Sea Ins. Co.* (1898), 3 Com. Cas. 164; *Charlesworth* v. *Faber* (1900), 5 Com. Cas. 408.

(*c*) The words "to pay as may be paid thereon" do not preclude the re-insurer from requiring proof of the loss: *Chippendale* v. *Holt* (1895), 65 L. J. Q. B. 104. Nor do they make payment to the original assured a condition precedent to recovery on the re-insurance policy: *In re Eddystone Mar. Ins. Co.*, [1892] 2 Ch. 423; 61 L. J. Ch. 326. See further as to their effect, *Uzielli* v. *Boston Mar. Ins. Co.* (1884), 15 Q. B. D. 11; 54 L. J. Q. B. 142; *Marten* v. *Steamship Owners' Underwriting Assn.* (1902), 71 L. J. K. B. 718; *Western Ass. Co. of Toronto* v. *Poole*, [1903] 1 K. B. 376; 72 L. J. K. B. 195.

(*d*) See Arnould, § 324; *In re Eddystone Marine Ins. Co.*, *supra*; *Herckenrath* v. *American Mutual Ins. Co.* (1848), 3 Barb. Ch. N. Y. 63.

(*e*) See Arnould, §§ 242, 243, 289; Abbott on Shipping, Pt. II. c. 3, s. 5; *Broomfield* v. *Southern Ins. Co.* (1870), L. R. 5 Ex. 192; 39 L. J. Ex. 186.

required for the prosecution of the voyage on which he is engaged, and he must, if possible, first communicate with the owners of the property (*f*).

The insurable interest of the lender in the sum lent and the interest arises, therefore, from the fact that he takes upon himself the perils of the voyage (*g*). If the money be made repayable in any event, the contract cannot be enforced as one of bottomry or respondentia, and the lender has no insurable interest in respect of the loan (*h*).

Respondentia and bottomry loans are by usage specifically described in the policy (*i*).

Arnould was of opinion that the borrower on bottomry and respondentia has no insurable interest in the property hypothecated, except in as far as its value exceeds the amount for which it is pledged; but the soundness of this view may be questioned (*k*).

Master's and seamen's wages.

11. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

Formerly the crew of a ship were, on grounds of public policy, not allowed to insure their wages, it being thought that such an insurance might tempt them in time of danger not to do their utmost for the preservation of the ship (*l*). The master alone, being regarded as a person of too much character to yield

(*f*) See Carver, Affreightment, §§ 310, 311; *The Onward* (1875), L. R. 4 A. & E. 38; 42 L. J. Ad. 61.

(*g*) Arnould, § 289; *Simonds* v. *Hodgson* (1832), 3 B. & Ad. 50; 1 L. J. Q. B. 51.

(*h*) *Stainbank* v. *Fenning* (1851), 11 C. B. 51; 20 L. J. C. P. 226; *Stainbank* v. *Shepard* (1853), 13 C. B. 418; 22 L. J. Ex. 341.

(*i*) See s. 26 (4), *post*, p. 34; Arnould, § 243.

(*k*) See Arnould, § 290.

(*l*) Arnould, § 244. Mr. Maclachlan suggested in the 6th ed. of Arnould, p. 44, that the effect of the alteration in the law made by the Merchant Shipping Act, 1854, ss. 183, 184 (whereby, when the ship was lost, seamen became entitled to be paid their wages until the time of the loss), may have been that seamen could thenceforth insure their wages; but the correctness of this view was very doubtful. The words "or any member of the crew" were not originally in the bill; they were added in Committee in the House of Commons.

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to such a temptation, was able to insure his wages, or his commissions, or other interest in the adventure (*m*).

Advance freight.

12. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

By English law advance freight, *i.e.*, freight payable under the contract before the delivery of the cargo at the end of the voyage, cannot be recovered back from the shipowner, even though the voyage be frustrated by the loss of the ship or goods (*n*).

Advance freight can, according to the weight of authority, be insured by a policy "on freight," though it is more usually described specifically, *e.g.*, as "advances on account of freight" or "advances against freight" (*o*).

Whether an advance made under a stipulation in the contract of affreightment is a payment on account of freight, and therefore not repayable, or a mere loan, depends on the apparent meaning of the contract, taken as a whole. If it be agreed that the advance is "subject to insurance" or subject to a deduction on account of insurance, there is enough to show that it is advance freight, and not a loan. An advance which is not stipulated for in the contract will be considered as made on account of freight, if it appears that this was the intention of the parties (*p*).

Charges of insurance.

13. The assured has an insurable interest in the charges of any insurance which he may effect (*q*).

In order to give the assured a proper indemnity, the charges, which usually comprise the premium and the stamp duty, may

(*m*) *King* v. *Glover* (1806), 2 B. & P. N. R. 206; *Hawkins* v. *Twizell* (1856), 25 L. J. Q. B. 160; 5 E. & B. 883; Arnould, § 245.

(*n*) See *Allison* v. *Bristol Mar. Ins. Co.* (1876), 1 App. Cas. 209; Arnould, §§ 232, 263; Carver, § 562.

(*o*) See Arnould, § 233.

(*p*) See the opinion of Brett, J., in *Allison* v. *Bristol Mar. Ins. Co.*, *supra*, in which the authorities are reviewed; Arnould, §§ 263, 264; Carver, §§ 563, 564.

(*q*) See Arnould, §§ 360, 362, 365; and s. 16, *post*, p. 20.

be taken into account in estimating the value of the subject-matter insured (*r*). Sect. 13.

14.—(1.) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage (*s*). Quantum of interest.

(2.) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit (*t*).

(3.) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

The mortgagor has an insurable interest in the full value of the subject-matter insured (even though it be mortgaged to its full value), because in case of loss he would not only be deprived of the thing insured, but would also remain liable for the mortgage debt (*u*).

Primâ facie, an insurance by a mortgagee or other person having a limited interest only covers his own interest; but where he has intended to insure for the benefit of the mortgagor also, or of the other parties interested, he can recover the full value of the property (*x*). Of course, he only recovers the surplus above his own interest as trustee for the mortgagor or other parties interested (*y*). If he has only intended to insure his own interest, and has received the full value from the insurers, the latter can claim the return of the surplus (*z*).

(*r*) See Arnould, § 363, for a practical method of calculating the charges in fixing the insurable value. If the broker's commission be paid by the assured, it may also be added: *ibid.*

(*s*) Arnould, §§ 298, 299.

(*t*) Arnould, §§ 292—295.

(*u*) Arnould, § 299.

(*x*) See *Irving* v. *Richardson* (1831), 2 B. & Ad. 193; 9 L. J. (O. S.) K. B. 225; *Ebsworth* v. *Alliance Mar. Ins. Co.* (1873), L. R. 8 C. P. 596, 609; 42 L. J. C. P. 305; Arnould, § 298.

(*y*) Arnould, § 295.

(*z*) *Irving* v. *Richardson*, *supra*.

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There seems to be no doubt that a mortgagee or consignee who has the legal property in the subject-matter insured, and who has insured for the benefit of all the parties interested, can recover the full value on an averment of interest in himself (*a*). It is not, however, settled whether an equitable mortgagee, or a consignee of goods to whom the legal property has not passed, but who is beneficially interested in the whole of them, can recover the full value on such an averment, or whether he must aver the interest of the other parties in order to recover the full value (*b*).

A "naked consignee," *i.e.*, one who has only the right to take possession of goods, is not within sub-s. (2), for he has no interest in the subject-matter insured. He may insure (and even sue in his own name) on behalf of a principal, but in order to recover he must aver the interest to be in the latter (*c*).

Lloyd's policy is expressed to be effected by the nominal assured "as well in his own name as for and in the name or names of all and every other person or persons to whom the same doth, may, or shall appertain" (*d*). Under this clause any person may avail himself of the insurance, who can prove that he was the person on whose account the insurance was intended to be made (*e*).

It may well be that insurances have been effected independently by mortgagor and mortgagee, or by consignor and consignee, which exceed the insurable value of the property insured. In such case the doctrine of subrogation or the rules relating to double insurance will (when the policies are all unvalued) prevent

(*a*) See *Ebsworth* v. *Alliance Mar. Ins. Co.*, *supra*, L. R. 8 C. P. at pp. 608, 638.

(*b*) In *Ebsworth* v. *Alliance Mar. Ins. Co.*, *supra*, where all the authorities were considered, the Court was equally divided on this point. In this case the point was one of practical importance, as all the judges were of opinion that the assured could not recover on an averment of the interest of the other parties.

(*c*) See Arnould, § 291; *per* Lawrence, J., and Lord Eldon, in *Lucena* v. *Craufurd* (1806), 2 B. & P. N. R. 269, 307, 324; *Seagrave* v. *Union Mar. Ins. Co.* (1866), L. R. 1 C. P. 305, 320; 35 L. J. C. P. 172. As to ratification of an insurance effected without previous authority, see s. 86, *post*, p. 96.

(*d*) See Schedule I., *post*, p. 99.

(*e*) See Arnould, §§ 12, 172, 173; *Boston Fruit Co.* v. *British and Foreign Mar. Ins. Co.*, [1906] A. C. 336; 75 L. J. K. B. 537. As to ratification, see s. 86, *post*, p. 96.

the ultimate recovery of more than the insurable value from the whole body of insurers (*f*).

A common instance of a third person having agreed, or being liable, to indemnify the owner of insurable property in case of loss, within the meaning of sub-s. (3), is where a carrier is answerable to the owner of goods for losses not due to excepted perils. Another instance is where a charterer has undertaken to pay to the shipowner the value of the ship, if she be lost during the voyage (*g*). In all cases within the sub-section, the owner of the property can in the first instance recover for the loss against his insurers, and the latter will thereupon become entitled by subrogation to the owner's remedies against the third person (*h*).

Assignment of interest.

15. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law (*i*).

The rights of the assured under the contract at the time when he parts with his interest may include the protection of the insurance against future losses and the right to recover for past losses, if any have occurred. It is established that in order to enable a purchaser or assignee to have the protection of the prior insurance, there must be either an assignment of the insurance by the original assured or an agreement, express or implied, to assign it or to keep it alive for the benefit of the

(*f*) See as to subrogation, s. 79, *post*, p. 88; Arnould, Part III. c. 9. As to double insurance, see ss. 32, 80, *post*, pp. 39, 91; Arnould, §§ 330—335, 1237, 1238. For insurable value, see s. 16, *post*, p. 20.

(*g*) See *Hobbs* v. *Hannam* (1811), 3 Camp. 93.

(*h*) See s. 79, *post*, p. 88.

(*i*) This qualification of the provisions of the section was no doubt inserted *ex abundanti cautela;* but (except possibly in the case of bankruptcy or death) it is difficult to suggest any transmission of interest by operation of law which can be within these provisions. See, however, Chalmers and Owen's Insurance Digest, 2nd ed. p. 21.

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purchaser or assignee (*k*). In the absence of such an agreement, an assignment of the policy by the original assured after his interest has ceased is inoperative (*l*).

Insurable Value.

Measure of insurable value.

16. Subject to any express provision or valuation in the policy (*m*), the insurable value of the subject-matter insured must be ascertained as follows:—

(1.) In insurance on ship (*n*), the insurable value is the value, at the commencement of the risk (*o*), of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy (*p*), plus the charges of insurance upon the whole:

(*k*) Arnould, § 174; *Powles* v. *Innes* (1843), 11 M. & W. 10; 12 L. J. Ex. 163; *North of England Oil Cake Co.* v. *Archangel Marit. Ins. Co.* (1875), L. R. 10 Q. B. 249; 44 L. J. Q. B. 121. The "London Floating Conditions," under which a cargo at sea is commonly sold in London, comprise the assignment to the buyer of the policies effected on the cargo. See Arnould, § 181.

(*l*) S. 51, *post*, p. 62. As to the manner in which a policy may be assigned, see s. 50, *post*, p. 61.

(*m*) As to this, see s. 27, *post*, p. 35.

(*n*) See Arnould, §§ 218—221, 365.

(*o*) The words "at the commencement of the risk" are unfortunate. In a policy "at and from" a particular port, the risk may well commence before her outfit, provisions or stores are put on board (see Schedule I., rule 3, *post*, p. 101), and before the necessary disbursements are incurred. Was it not intended that these should be included if subsequently put on board before the ship sailed?

(*p*) The items hereby expressly included were not, in the opinion at least of certain learned judges of the Court of Appeal, included, prior to this Act, in an insurance on "ship" merely. See *Roddick* v. *Indemnity Mutual Ins. Co.*, [1895] 2 Q. B. 380. It was probably only by the general words "tackle, apparel, ordnance, munition, artillery, boat, and other furniture" which form part of a Lloyd's policy that such items were covered. The inclusion in this sub-section of money advanced for seamen's

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The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured (*q*), and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade (*r*):

(2.) In insurance on freight (*s*), whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured (*t*), plus the charges of insurance:

wages in the insurable value of the ship is inconsistent with rule 15 of the 1st Schedule to the Act (*post*, p. 106), where the words "money advanced for seamen's wages" are omitted. There is no judicial authority on the point whether such advances were included before the Act came into force; but Stevens stated that they were included, and his statement was adopted by Arnould and by Mr. McArthur: see Stevens on Average, 5th ed. p. 190; Arnould, §§ 356, 357; McArthur, 2nd ed. p. 67.

(*q*) Ordinarily the coals and engine stores are owned by the shipowner, whether the vessel be under charter or not. But where the ship is demised to a charterer, on the terms that the latter supplies the coals and stores on his own account, he must insure them for himself. It is not easy to see why the words "if owned by the assured," assuming them to be necessary here, were not also inserted after the words "stores for the officers" in the preceding paragraph.

(*r*) These words possibly alter the law as to whaling, and perhaps other similar voyages: see Arnould, § 219.

(*s*) See Arnould, §§ 229—235, 365; also Schedule I. r. 16, *post*, p. 107.

(*t*) This sub-section embodies the rule that under an insurance on freight the assured is entitled, at whatever period of the voyage the loss takes place, to recover the gross, not merely the net, freight: see Arnould, § 365; and *United States Shipping Co.* v. *Empress Ass. Corp.*, [1907] 1 K. B. 259, in which case Channell, J., recently held, contrary to the opinion of the text-writers (see Arnould, § 262, note (*a*)), that a charterer who sub-let the ship was entitled to recover the whole freight, without deduction of the hire which he would have had to pay to the shipowner. The words "at the risk of the assured" raise the question—To what period of time do they refer? If, for instance, a shipowner, having at the commencement of a round voyage only 500*l.* freight at risk, takes on board at an intermediate port additional cargo, expected to earn as much freight again, does he, in the event of the whole cargo being lost, recover 1,000*l.* on his freight policy, or only 500*l.*, the amount at risk at the commencement of the voyage? The result, it is apprehended, will in each case depend on the intention of the assured when he effected

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(3.) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole (*u*):

(4.) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches (*x*), plus the charges of insurance.

The contract of marine insurance is, in theory at least, a contract of indemnity. Sometimes, as in policies on ship or goods, it contemplates the position of the assured immediately before the marine risk is entered upon, and endeavours to put him, in the event of loss, in the same position as he would have occupied if he had never engaged in the venture. In other cases, as in policies on profits, commissions, &c., it has regard to the position he would have occupied if the venture had proved successful, and secures him against the loss of his expected profits or earnings. In policies on freight, he is in a still better position, owing to the rule by which the gross freight, without any deduction in respect of the expenses of earning it, is deemed to be his interest at risk, so that in the event of a loss happening at the beginning of a voyage, he may actually be a gainer by it.

Insurances, except on goods, are now usually effected by valued policies. This section was no doubt intended to express the existing state of the law in cases where there was no agreed valuation, or where for any reason it was necessary to ascertain the real insurable value apart from such agreement.

Disclosure and Representations.

Insurance is *uberrimæ fidei.*

17.—A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith

the insurance, and on the wording of the policy. See s. 26 (3), *post*, p. 34; and Arnould, §§ 345, 346, 358, 519.

(*u*) Arnould, § 365.

(*x*) "When the policy attaches." These words are strangely inapplicable to policies on profits or commissions, where the insurable value or amount recoverable may depend entirely on the market-prices prevailing at the date of the expected arrival of the vessel.

be not observed by either party, the contract may be avoided by the other party (*y*). Sect. 17.

Disclosure by assured.

18.—(1.) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him (*z*).

(*y*) See Arnould, § 522; and Lord Mansfield's judgment in *Carter* v. *Boehm* (1766), 3 Burr. 1909. The contract of marine insurance does not differ from other insurance contracts in that it is one *uberrimæ fidei*. Good faith is equally demanded on both sides. It must be noticed that its absence renders the contract voidable only, not void. As to the time within which the election to avoid the contract must be made, see Arnould, § 523; *Morrison* v. *Universal Mar. Ins. Co.* (1873), L. R. 8 Ex. 40, 197; 42 L. J. Ex. 115. Earlier drafts of this Bill dealt with this point: see s. 87 of the Bill of 1899; but there is no corresponding section in this Act.

(*z*) The statement that the "assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him" generalizes a principle which has been established with reference to matters known to such agents of the assured as he relies upon for information in the ordinary course of business. The principle is that if an agent, whose duty it is to keep his employer informed of all matters affecting the subject-matter insured, has withheld from his principal information of a material fact which he might in the ordinary course have communicated to the latter at the time when the insurance was effected, the contract can be avoided by the underwriter on account of the non-disclosure of this matter which, if the agent had done his duty, the principal would have been able to disclose: see Arnould, §§ 578—583; *Blackburn* v. *Vigors* (1887), 12 App. Cas. 531; 57 L. J. Q. B. 114. It has been held that the master of a ship and a general agent for shipping business are such agents of a shipowner: *Gladstone* v. *King* (1813), 1 M. & S. 35; *per* Lord Halsbury and Lord Watson, in *Blackburn* v. *Vigors* (1887), 12 App. Cas. 531, 537, 540; 57 L. J. Q. B. 114; and that a factor employed to ship a cargo and the general agent of a cargo-owner at a foreign port are such agents of the cargo-owner: *Fitzherbert* v. *Mather* (1785), 1 T. R. 12; *Proudfoot* v. *Montefiore* (1867), L. R. 2 Q. B. 511; 36 L. J. Q. B. 225. On the other hand, it is not the duty of an insurance broker to communicate all his information to his employer. Therefore, if A. employs a broker, B., to effect an insurance, but the insurance is afterwards effected independently by another broker, C., B.'s

Sect. 18. If the assured fails to make such disclosure, the insurer may avoid the contract (*a*).

(2.) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk (*b*).

(3.) In the absence of inquiry (*c*) the following circumstances need not be disclosed (*d*), namely:—

(a) Any circumstance which diminishes the risk;

(b) Any circumstance which is known (*e*) or presumed to be

knowledge is not relevant to the validity of the policy either under this section or under s. 20. See *Blackburn* v. *Vigors*, *supra*. Lloyd's agents in foreign ports are not the agents of the individual underwriters, who are therefore not affected with their knowledge of casualties abroad: *Wilson* v. *Salamandra Ins. Co.* (1903), 8 Com. Cas. 129. The agent, in sending information to his principal, is bound to use such means of communication as are reasonable in the circumstances. In the case of a serious casualty he ought usually, no doubt, to telegraph if this be practicable: see Arnould, § 586; *Proudfoot* v. *Montefiore*, *supra*.

(*a*) There are two English cases in which it was held that where the master of a ship omitted, though not fraudulently, to send information to the shipowner of a mishap causing a particular average loss, the non-disclosure of the occurrence did not avoid the policy, but only precluded the assured from recovering for the loss in question: *Gladstone* v. *King* (1813), 1 M. & S. 35; *Stribley* v. *Imperial Mar. Ins. Co.* (1876), 1 Q. B. D. 507; 45 L. J. Q. B. 396. These decisions have been criticised (see *per* Lord Halsbury and Lord Watson in *Blackburn* v. *Vigors* (1887), 12 App. Cas. 531, 536, 540; 57 L. J. Q. B. 114; Arnould, §§ 584, 585), and the exception to the general rule which they created seems not to be recognised in the Act.

(*b*) That is to say, it is not enough for the particular insurer (unless he can prove fraud) to show that he would have been influenced, if a given fact had been disclosed to him; he must also show that the information would have had an effect upon the mind of an ordinary prudent underwriter. See Arnould, §§ 554, 589; *Ionides* v. *Pender* (1874), L. R. 9 Q. B. 531; 43 L. J. Q. B. 227; *Rivaz* v. *Gerussi* (1880), 6 Q. B. D. 222; 50 L. J. Q. B. 176.

(*c*) See Arnould, § 620; *Haywood* v. *Rogers* (1804), 4 East, 590.

(*d*) See *Carter* v. *Boehm* (1766), 3 Burr. at p. 1909; Arnould, § 609.

(*e*) The assured cannot rely on the underwriter's previous knowledge of a material fact, which was not present to the underwriter's mind at the time when the contract was concluded: *Bates* v. *Hewitt* (1867), L. R. 2 Q. B. 595; 36 L. J. Q. B. 282.

known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know (*f*);

(c) Any circumstance as to which information is waived by the insurer;

(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty (*g*).

(4.) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact (*h*).

(5.) The term "circumstance" includes any communication made to, or information received by, the assured (*i*).

This and the following sections develop and illustrate the principle laid down in the preceding section with relation to the

(*f*) *E.g.*, usages of trade, usual clauses in mercantile contracts, general marine intelligence: Arnould, §§ 610—617. See *The Bedouin*, [1894] P. 1; 63 L. J. Ad. 30 (twenty-four hours' clause in time charter); *Charlesworth* v. *Faber* (1900), 5 Com. Cas. 408 (continuation clause in time policy). As to intelligence in Lloyd's Lists (now amalgamated with the "Shipping Gazette"), see *Nicholson* v. *Power* (1869), 20 L. T. N. S. 580; *Morrison* v. *Universal Mar. Ins. Co.* (1873), L. R. 8 Ex. 40, 197; 42 L. J. Ex. 115.

(*g*) Arnould, §§ 619, 621. *E.g.*, it is said to be unnecessary to disclose all the past casualties of a ship, because the underwriter is protected by the implied warranty of seaworthiness. But this reasoning does not apply to a time-policy, in which there is no such implied warranty. Probably an underwriter is presumed to know that every ship, unless she be a new one, has had her share of casualties. If he wants further information as to the history of the particular ship, he must ask for it. It is, however, clear that facts tending to show unseaworthiness at the commencement of the risk must, in the case of a time-policy, be disclosed: see *Russell* v. *Thornton* (1860), 30 L. J. Ex. 69.

(*h*) As to the admissibility of expert evidence to show whether a particular circumstance is material or not, see Arnould, § 626. In practice it is now regularly admitted.

(*i*) Such a "circumstance" as is here referred to may be material, although the information may be at the time discredited by the assured, or may subsequently prove to have been untrue: Arnould, §§ 601, 602. See *Morrison* v. *Universal Mar. Ins. Co.*, *supra*; *Lynch* v. *Dunsford* (1811), 14 East, 494.

Sect. 18. duty of the assured. S. 17 alone relates also to the corresponding duty of the insurer, which in practice is not so important. Concealment as distinct from misrepresentation is dealt with in ss. 18 and 19, and misrepresentation is the subject of s. 20 (*k*). An innocent concealment or misrepresentation—whether due to mistake, negligence or accident—is, if the circumstance be material, just as fatal as one which is intentional. The only difference is that if there be fraud, and the fraud has influenced the underwriter, it will vitiate the contract, even although the fact misrepresented or concealed may have been immaterial (*l*).

Disclosure by agent effecting insurance.

19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer—

(a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him (*m*) ; and

(b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

Where the insurance is effected through a broker, the underwriter is entitled to the knowledge not only of the principal, but also of that broker and his sub-agents. But he is not entitled to the knowledge of another broker, who, though originally instructed to effect an insurance, did not succeed in doing so. Nor is he entitled to the knowledge of the principal unless the latter received the information in sufficient time, before the con-

(*k*) For misrepresentation, see Arnould, Part II. c. 1 ; and for concealment, *ibid.* c. 2.

(*l*) See Arnould, §§ 536, 575, 591.

(*m*) These words imply that if an agent is not kept properly instructed by his sub-agents, servants or employés, the principal may have to suffer for any non-disclosure by his agent attributable to this cause. If so, this sub-section goes beyond any decision upon the point.

clusion of the contract, for the principal to have communicated it to the broker (*n*). Sect. 19.

Representations pending negotiation of contract.

20.—(1.) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue, the insurer may avoid the contract (*o*).

(2.) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk (*p*).

(3.) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief (*q*).

(4.) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer (*q*).

(5.) A representation as to a matter of expectation or belief is true if it be made in good faith (*q*).

(*n*) See Arnould, §§ 577—588; *Blackburn* v. *Vigors* (1887), 12 App. Cas. 531; 57 L. J. Q. B. 114; *Blackburn* v. *Haslam* (1888), 21 Q. B. D. 144; 57 L. J. Q. B. 479; note (*z*), *ante*, p. 24.

(*o*) If these words are construed literally, the contract is vitiated by an untrue representation, even though the insurer was not influenced by it, and in fact knew of its falsity. Such a construction involves an anomalous state of the law: see Arnould, § 555; and although it agrees with the opinion of Phillips (see 1 Phillips, s. 681), it is opposed to that of Arnould (*ubi supra*), which is supported by Lord Tenterden's ruling in *Flinn* v. *Headlam* (1829), 9 B. & C. 693.

(*p*) See note (*b*), *ante*, p. 24.

(*q*) This classification of representations ignores what have been termed "promissory representations"—representations, that is, as to future facts. If, for instance, a representation is honestly made (forming no part of the contract) that a vessel will sail with convoy, is this such a representation as that its subsequent non-fulfilment will vitiate the policy? By the general law of the land, apart from any special rules which may be applicable to marine insurance, a representation of this sort, relating to the future, unless it amount to a contract, has no legal significance. See *Jorden* v. *Money* (1854), 5 H. L. C. 185; 23 L. J. Ch. 865. But in marine insurance law there is con-

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(6.) A representation may be withdrawn or corrected before the contract is concluded (*r*).

(7.) Whether a particular representation be material or not is, in each case, a question of fact (*s*).

As to misrepresentation, see Arnould, Part II. c. 1. Generally speaking, the same principles apply to misrepresentation as to concealment. These have been already dealt with in the notes to s. 18. A representation may be either verbal or in writing, and is distinguished from an express warranty in that the latter must necessarily form part of the policy (*t*), whereas a representation seldom, if ever, does. Moreover, substantial compliance with a representation is sufficient, whereas a warranty, as we see by s. 33 (*u*), must be literally fulfilled, whether it be material to the risk or not.

When contract is deemed to be concluded.

21. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the

siderable authority, the most weighty being Lord Eldon's decision in the House of Lords in *Dennistoun* v. *Lillie* (1821), 3 Bligh, 202, that promissory representations, equally with representations as to existing facts, must be substantially complied with. The subject is discussed in Arnould, §§ 538—544. The distinction which is drawn in this sub-section between a representation as to a matter of fact, which by sub-s. 4 is true if it be substantially correct, and one as to a matter of expectation or belief, which by sub-s. 5 is true if it be made in good faith, was criticized by Bowen, L. J., who regarded the representation in either case as one of fact—the fact in the latter case being the condition of mind of the person making the statement, a misrepresentation as to which, if made at all, cannot very easily have been made in good faith. See *per* Bowen, L. J., in *Edgington* v. *Fitzmaurice* (1885), 29 Ch. D. 459, at p. 483; 55 L. J. Ch. 650; Arnould, § 545. Sometimes an assured makes a statement, but qualifies it by adding that it is made on the information of others. In other cases he simply submits such intelligence as he has in its naked form to the insurers, leaving them to draw their own conclusions. Under these circumstances, unless his intelligence comes from agents of his own for whose veracity he is responsible, he will not be answerable for the truth of the facts, but only for the correct communication of his information: Arnould, § 522.

(*r*) See Arnould, § 561. See s. 21, *infra*, as to the time when the contract is concluded.

(*s*) See note (*h*), *ante*, p. 25.

(*t*) See s. 35, *post*, p. 43.

(*u*) *Post*, p. 41.

insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped (*v*). Sect. 21.

The Policy.

22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act (*w*). The policy may be executed and issued either at the time when the contract is concluded (*x*), or afterwards. Contract must be embodied in policy.

This section must be read in connection with the Stamp Act, 1891. In the interest of the revenue the use of stamped policies has for many years been compulsory. At present s. 93 (1) of the Stamp Act, 1891, provides that a contract for "sea insurance" (other than such insurance as is referred to in s. 55 of the Merchant Shipping Act Amendment Act, 1862), shall not be *valid* unless it is expressed in a policy of sea-insurance (*y*). This provision is not affected by the present Act (*z*). A policy (*a*) must be stamped according to the scale in Schedule I. of the Stamp

(*v*) See Arnould, §§ 567, 576; *Cory* v. *Patton* (1872), L. R. 7 Q. B. 304; (1874), L. R. 9 Q. B. 577; 43 L. J. Q. B. 181. The result is that any fresh fact coming to the knowledge of the assured after the initialling of the slip, but before the execution of the policy itself, need not be communicated to the insurers. As an underwriter is in honour bound, after initialling the slip, to issue a stamped policy, he does not by doing so lose his right to set up the defence of concealment, though he may have become aware of this defence before issuing the policy. See *Morrison* v. *Univ. Mar. Ins. Co.* (1873), L. R. 8 Ex. 197; 42 L. J. Ex. 115; Arnould, § 569.

(*w*) For the requisites of a valid policy, see s. 23, *infra*.

(*x*) In the ordinary course of business, the contract is concluded when the slip is signed or initialled by the insurer: see s. 21, *supra*.

(*y*) For the meaning of the term "policy of sea insurance," see Stamp Act, 1891, s. 92 (1), (2), *post*, p. 109.

(*z*) S. 91 (1), (a), *post*, p. 98.

(*a*) By s. 91 of the Stamp Act, 1891, *post*, p. 109, "policy of insurance" includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced.

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Act, 1891 (*b*), before it is signed or underwritten (*c*), but it may be stamped afterwards for the purpose of being produced in evidence, on payment of a penalty of £100 (*d*).

The policy must be executed and delivered by the insurer to make a valid contract (*e*). It is not usual to execute a policy in this country at the time when the contract is concluded. Sometimes, indeed, the policy is only executed a long time afterwards, it may be even after a total loss (*f*). The usual course of business when an insurance has been effected with Lloyd's underwriters is for the broker who effected the insurance to prepare the policy, and take it to all the underwriters who initialled the slip for their signature. As the policy is immediately handed back to him, the transaction amounts to an execution and delivery thereof. The insurance companies have a different practice. A company prepares and executes its own policy from a "slip" or memorandum supplied by the broker, and retains the policy until it is called for. When the policy, after execution by the insurer, remains in his servant's custody, ready to be handed over on application to the assured, the presumption is that it has become a valid contract (*g*).

What policy must specify.

23. A marine policy must specify—

(1.) The name of the assured, or of some person who effects the insurance on his behalf:

(2.) The subject-matter insured and the risk insured against:

(*b*) Stamp Act, 1891, s. 1. For the additional duty in respect of a continuation clause, see the Finance Act, 1901, s. 11, sub-ss. (2), (3), *post*, p. 112. As to the stamping of policies on ships under construction or repair, or on trial, see the Revenue Act, 1903, s. 8, *post*, p. 112.

(*c*) Stamp Act, 1891, s. 95 (1), *post*, p. 110. As to the subsequent stamping of policies of mutual insurance with an additional stamp, and of policies executed out of the United Kingdom, see *ibid.* s. 95 (1) (a) and (b). For penalties for breaches of the provisions of the Stamp Act, see *ibid.* s. 97. As to alterations after the policy has been stamped, see *ibid.* s. 96; Arnould, §§ 42—51.

(*d*) Stamp Act, 1891, s. 95 (2), *post*, p. 110.

(*e*) See Arnould, § 27.

(*f*) See *Mead* v. *Davidson* (1835), 3 Ad. & El. 303; 4 L. J. (N. S.) K. B. 193.

(*g*) *Xenos* v. *Wickham* (1867), L. R. 2 H. L. 296; 36 L. J. C. P. 313; *Cope* v. *Miller* (1896), 1 Com. Cas. 296; Arnould, §§ 27, 102.

(3.) The voyage, or period of time, or both, as the case may be, covered by the insurance (*h*):

(4.) The sum or sums insured (*i*):

(5.) The name or names of the insurers.

Provision (1) of this section takes the place of the much more elaborate provision in s. 1 of 28 Geo. 3, c. 56, which is repealed by s. 94 of this Act. The Act of 28 Geo. 3 made it necessary to insert in the policy the name or usual style either (a) of one or more of the persons interested in the insurance, or (b) of the consignor or consignee of the insured property, or (c) of the person resident in Great Britain who received the order to insure, or (d) of the person who gave the order to the agent immediately employed to effect the insurance. A liberal construction was put on this Act, which reduced it to a mere prohibition against policies in blank (*k*).

S. 2 of 28 Geo. 3, c. 56 made a policy which did not comply with the requisites of the Act null and void; but the effect of s. 22 of the present Act seems only to be that a policy which does not satisfy s. 23 cannot be given in evidence. By s. 93 (3) of the Stamp Act, 1891, however, a policy of sea insurance is not valid unless it specifies the particular risk or adventure (*l*), the names of the subscribers or underwriters, and the sum or sums insured (*m*), and the provisions of the Stamp Act are not affected by those of the present Act (*n*).

Signature of insurer.

24.—(1.) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the

(*h*) In *Royal Exchange Ass. Corporation* v. *Sjoforsakrings Aktie-Bolaget Vega*, [1902] 2 K. B. 384; 71 L. J. K. B. 739, the Court of Appeal held that a continuation clause did not specify the termini of the voyage, and therefore did not specify the "risk or adventure" within the meaning of s. 93 (3), of the Stamp Act, 1891: see *infra*.

(*i*) In *Home Mar. Ins. Co.* v. *Smith*, [1898] 2 Q. B. 351; 67 L. J. Q. B. 777, the Court of Appeal held that an agreement to re-insure the plaintiffs as regards certain risks in respect of the excess over specified amounts, did not specify the sum or sums insured.

(*k*) Arnould, §§ 11, 169, 170.

(*l*) See *Royal Exchange Ass. Corporation* v. *Sjoforsakrings Aktie-Bolaget Vega, supra*.

(*m*) See *Home Mar. Ins. Co.* v. *Smith, supra*.

(*n*) S. 91 (1) (a), *post*, p. 98.

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corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2.) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured (*o*).

The fact that a number of underwriters have one representative who insures for all of them, and subscribes their names, does not make them partners (*p*). If, however, there be a partnership, the fact of there being separate subscriptions by the partners individually has been held not to bar the assured from resorting to the partnership assets (*q*).

Voyage and time policies.

25.—(1.) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy," and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy." A contract for both voyage and time may be included in the same policy.

1 Edw. 7, c. 7.

(2.) Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid.

Policies have sometimes, though not frequently, been effected which partake of the nature both of voyage and time policies, the underwriter being only liable for losses which happen within the specified limits of time and on the specified voyage (*r*). Thus, a ship may be insured "from London to Buenos Ayres for six months," or "from the 24th October at and from any

(*o*) See *Tyser* v. *Shipowners' Syndicate*, [1896] 1 Q. B. 135; 65 L. J. Q. B. 238; *Leo SS. Co., Ltd.* v. *Corderoy* (1896), 1 Com. Cas. 300, 379; Arnould, § 26. It is a fundamental rule of Lloyd's that no member shall, in the City of London, underwrite in the name of a partnership: 34 Vict. c. xxi., Schedule; Arnould, vol. 2, p. 1467.

(*p*) *Tyser* v. *Shipowners' Syndicate, supra.*

(*q*) *Brett* v. *Beckwith* (1856), 26 L. J. Ch. 130.

(*r*) Arnould, §§ 9, 443.

port in Newfoundland to Falmouth." Such policies, however, are effectively either time policies or voyage policies. A policy for a voyage and for a given time after arrival at the specified destination is, however, in a true sense, a policy for voyage and time. Such a policy, if it covers any time exceeding thirty days after the ship has been moored at anchor at her destination, is charged with duty both as a voyage policy and a time policy (*s*). Sect. 25.

S. 9, sub-ss. (2) and (3) of the Stamp Act, 1891, invalidates a policy of sea insurance made for any time exceeding twelve months. It is usual in time policies to have a "continuation clause," which, if the ship be at sea when the period of insurance expires, prolongs the insurance until her arrival at some port, and it was held that the effect of the clause in a policy for twelve months was to vitiate the insurance (*t*). Now, however, s. 11 of the Finance Act, 1901, allows the insurance to be extended by a continuation clause until the ship's arrival, or for thirty days afterwards (*u*).

26.—(1.) The subject-matter insured must be designated in a marine policy with reasonable certainty (*x*). Designation of subject-matter.

(2.) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy (*y*).

(*s*) Stamp Act, 1891, s. 94, *post*, p. 110.

(*t*) *Charlesworth* v. *Faber* (1900), 5 Com. Cas. 408; *Royal Exchange Ass. Corporation* v. *Sjoforsakrings Aktiebolaget Vega*, [1902] 2 K. B. 384; 71 L. J. K. B. 739.

(*u*) The continuation clause is deemed to be a separate insurance: Finance Act, 1901, s. 11 (3); as to the stamp, see *ibid.* sub-ss. (2) and (3), *post*, p. 112.

(*x*) Arnould, § 228. As to the description of the subject-matter, see *ante*, note on s. 3; for what is covered by a policy on "freight" or "goods," see Schedule I., rules 16 and 17, *post*, p. 107. Deck cargo and live stock must in general be insured specifically: *ibid.*

(*y*) Arnould, §§ 251, 252. When the Bill left the House of Lords, sub-s. 2 contained a proviso that when an insurance is effected by a lender on bottomry or respondentia, the nature of his interest must be specified. The sub-section was amended in the House of Commons by omitting the proviso, and adding to the present sub-section the words "but when the interest is of such a kind as to affect the character of the risk it must be stated; and in particular a loan on bottomry or respondentia is

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(3.) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4.) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured (*z*).

Sub-s. 3 lays down a general principle the application of which may give rise to difficulty. It is founded on passages in the opinion of Brett, J., and (presumably) the judgment of Lord Hatherley, in *Allison* v. *Bristol Mar. Ins. Co.* (*a*). There are numerous decisions referable to this principle (*b*), *e.g.*, *Williams* v. *Canton Ins. Office* (*c*), where it was held that the assured had intended to insure chartered freight, and could therefore not recover for a loss of bill of lading freight. On the other hand, it was held in *Denoon* v. *Home and Colonial Ass. Co.* (*d*) that a

not effectually insured by a policy on ship or goods, unless the nature of the interest is stated." The amendment was not agreed to by the Lords, but the proviso was not restored. There is some authority for the statement that when the interest affects the character of the risk it must be stated in the policy: see *per* Blackburn, J., in *Mackenzie* v. *Whitworth* (1875), 1 Ex. D. 36, 41, 42; 45 L. J. Ex. 233; Arnould, §§ 251, 252, but in view of the precise language of the sub-section it cannot now be accepted as law. Nevertheless, it is apprehended that where the risk is of an exceptional kind, the underwriter may be entitled to avoid the insurance, if the nature of the risk has not been disclosed to him. The necessity of insuring a loan on bottomry or respondentia specifically has been explained on two grounds: (1) usage (see *per* Lord Mansfield, in *Glover* v. *Black* (1763), 3 Burr. 1394; Arnould, § 243); (2) the peculiarity of the risk, there being neither average nor salvage (see *per* Kent, J., in *Robertson* v. *United Ins. Co.* (1801), 2 Johnson's Cases, 250). On the ground of usage, it will apparently still be necessary, by reason of sub-s. (4), to insure bottomry and respondentia loans specifically.

(*z*) *Glover* v. *Black*, *supra*; *Mackenzie* v. *Whitworth*, *supra*.

(*a*) (1875), 1 App. Cas. 209, 216, 235; see Chalmers & Owen, Digest of Mar. Ins. 2nd ed. p. 36.

(*b*) See *Feise* v. *Aguilar* (1811), 3 Taunt. 506; *Forbes* v. *Aspinall* (1811), 13 East, 323; *Rickman* v. *Carstairs* (1833), 5 B. & Ad. 651; *Tobin* v. *Harford* (1863), 34 L. J. C. P. 37; 17 C. B. N. S. 528; *Williams* v. *North China Ins. Co.* (1876), 1 C. P. D. 757; *The Main*, [1894] P. 320; 63 L. J. Adm. 69.

(*c*) [1901] A. C. 462; 70 L. J. K. B. 962.

(*d*) (1875), L. R. 7 C. P. 341; 41 L. J. C. P. 162.

valued policy on freight must be construed as referring to the freight of a full cargo, although the assured intended only to insure the freight of a smaller shipment of goods, but did not communicate his intention to the insurers. The question may arise whether by reason of the general language of sub-s. 3 the assured will in a similar case be able to recover the full amount of the valuation. Sect. 26.

Valued policy.

27.—(1.) A policy may be either valued or unvalued (*e*).

(2.) A valued policy is a policy which specifies the agreed value of the subject-matter insured (*f*).

(3.) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial (*g*).

(4.) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss (*h*).

(*e*) See the definition of an unvalued policy in s. 28. An unvalued policy is usually called an *open policy:* see Arnould, § 20; McArthur, 2nd ed. p. 2. The term *unvalued policy* has, however, been substituted in the Act, because *open policy* is sometimes used in mercantile language to denote a floating policy (for which see s. 29, *post*, p. 37) which has not been fully declared. See Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 40.

(*f*) The ordinary English policy contains a valuation clause for the insertion of the agreed value (see Schedule I., *post*, p. 99), though frequently the valuation follows the statement of the sum insured: see Arnould, § 20. When the policy is unvalued, the blank in the valuation clause is simply left unfilled.

(*g*) Arnould, §§ 339—342; *Barker* v. *Janson* (1868), L. R. 3 C. P. 303; 37 L. J. C. P. 105; *North of England Ass. Assn.* v. *Armstrong* (1870), L. R. 5 Q. B. 244; 39 L. J. Q. B. 81; *Woodside* v. *Globe Mar. Ins. Co.*, [1896] 1 Q. B. 105; 65 L. J. Q. B. 117; *Muirhead* v. *Forth, &c. Assn.*, [1894] A. C. 72; *SS. Balmoral Co.* v. *Marten*, [1902] A. C. 511; 71 L. J. K. B. 819; see *Burnand* v. *Rodocanachi* (1882), 7 App. Cas. 333, 335, 341; 51 L. J. Q. B. 548.

(*h*) *Irving* v. *Manning* (1847), 1 H. L. Cas. 287; Arnould, §§ 1133, 1134. For the definition of a constructive total loss, see s. 60, *post*, p. 70. Though the valuation is disregarded in considering whether there is a constructive total loss, it determines the amount recoverable: *Irving* v. *Manning, supra;* Arnould,

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The language of sub-s. 3 suggests that in case of fraud the valuation can be set aside, and another valuation substituted. According to English law, however, a valuation cannot be altered (*i*); but the insurance is entirely vitiated by an over-valuation which is fraudulent, or so excessive as to make the contract a mere wager, or which is material to be disclosed, but has in fact been concealed (*k*). Further, the valuation does not preclude the inquiry whether the assured had an insurable interest in the whole of the subject of valuation, or whether the whole interest valued was ever at risk (*l*).

The valuation is binding between the parties, not merely when the question is as to the amount recoverable in case of a loss, but generally "for the purposes of the particular policy" (*m*).

When several valued policies have been taken out on the same subject-matter, the amount recoverable in case of a loss presents no difficulties when the valuation is the same in all the policies (*n*). When, however, the valuation is not the same in all the policies, difficult questions have arisen, and the amount recoverable may depend on the order in which the assured resorts to the different policies (*o*).

§ 348. Policies on ship frequently contain a clause providing that the insured value shall be taken to be the repaired value in ascertaining whether the ship is a constructive total loss: Arnould, § 1134. See *North Atlantic SS. Co.* v. *Burr* (1904), 9 Com. Cas. 164.

(*i*) Arnould, §§ 20, 341.

(*k*) *Haigh* v. *De la Cour* (1812), 3 Camp. 319; *per* Lord Mansfield, *Lewis* v. *Rucker* (1761), 2 Burr. 1171; *Ionides* v. *Pender* (1874), L. R. 9 Q. B. 531; 43 L. J. Q. B. 227; Arnould, § 342.

(*l*) *Forbes* v. *Aspinall* (1811), 13 East, 323; *Rickman* v. *Carstairs* (1833), 5 B. & Ad. 651; 3 L. J. K. B. 28; *Tobin* v. *Harford* (1864), 17 C. B. N. S. 528; 34 L. J. C. P. 37; *Denoon* v. *Home & Colonial Ass. Co.* (1872), L. R. 7 C. P. 341; 41 L. J. C. P. 162.

(*m*) *Muirhead* v. *Forth, &c. Assn.*, [1894] A. C. 72 (warranty that the assured should keep his ship uninsured as to one-fifth of its value); cf. *Burnand* v. *Rodocanachi*, *supra*, where the underwriter, relying on the agreed value in the policy, unsuccessfully claimed to be entitled to the additional compensation which the assured received from a foreign government for the loss of his ship.

(*n*) For a total loss the assured can recover to the full amount of the valuation, but nothing more: ss. 67, 68, *post*; *Irving* v. *Richardson* (1831), 2 B. & Ad. 193; 9 L. J. (O. S.) K. B. 225. For the adjustment of partial losses, see ss. 69, 70, 71, *post*.

(*o*) See Arnould, §§ 349—354; *Bousfield* v. *Barnes* (1815), 4

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Unvalued policy.

28. An unvalued policy is a policy which does not specify the value of the subject-matter insured (*p*), but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore specified (*q*).

Floating policy by ship or ships.

29.—(1.) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration (*r*).

(2.) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner (*s*).

(3.) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith (*t*).

Camp. 228; *Bruce* v. *Jones* (1863), 1 H. & C. 769; 32 L. J. Ex. 132; *North of England Ins. Assn.* v. *Armstrong* (1870), L. R. 5 Q. B. 244; 39 L. J. Q. B. 81; criticised by Lord Blackburn, in *Burnand* v. *Rodocanachi* (1882), 7 App. Cas. 333, 342; 51 L. J. Q. B. 548.

(*p*) See notes to s. 27, *supra*.

(*q*) See *Insurable Value*, s. 16, *ante*, p. 20. For the amount recoverable, see *Measure of Indemnity*, ss. 67—71, *post*, pp. 79—82.

(*r*) See Arnould, §§ 185, 186. The assent of the underwriter to the declaration is not required: *Ionides* v. *Pacific Ins. Co.* (1872), L. R. 7 Q. B. 517; 41 L. J. Q. B. 190.

(*s*) Arnould, § 187. Lord Ellenborough held, in *Robinson* v. *Touray* (1811), 3 Camp. 158; 1 M. & S. 217, that the declaration did not form part of the contract, and need not be in writing.

(*t*) *Gledstanes* v. *Royal Exchange Ass. Co.* (1864), 34 L. J. Q. B. 30; *Stephens* v. *Australasian Ins. Co.* (1872), L. R. 8 C. P. 18; 42 L. J. C. P. 12; Arnould, § 188. When the assured has two or more floating policies on goods current at the same time, it has been held that he may appropriate a shipment to any policy

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(4.) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration (*u*).

Floating policies are used to protect particular consignments of goods actually ordered, when the assured does not know at the time of insuring by what ships the goods have been or will be consigned. They are also largely used by merchants to cover all the goods which they expect to have at risk, up to a certain amount, within stated limits of space and time. The policy in this case attaches on all shipments comprised within its terms, until the amount insured has been exhausted by the declarations. When that happens, the policy is said to be "fully declared" or "written off" (*x*).

Construction of terms in policy.

30.—(1.) A policy may be in the form in the First Schedule to this Act (*y*).

(2.) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them.

Premium to be arranged.

31.—(1.) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

or policies he pleases: *Henchman* v. *Offley* (1782), 2 H. Bl. 345, n.; *Kewley* v. *Ryan* (1794), *ibid.* 343; Arnould, § 189. It is usual, however, where there is a series of floating policies, to insert a clause making them follow one another according to date: *per* Lord Blackburn, *Inglis* v. *Stock* (1885), 10 App. Cas. 263, 269; 54 L. J. Q. B. 582; McArthur, 2nd ed. p. 78. For the effect of a fraudulent under-valuation under an earlier policy upon succeeding policies, see *Rivaz* v. *Gerussi* (1880), 6 Q. B. D. 222; 50 L. J. Q. B. 176.

(*u*) *Per* Lord Ellenborough, *Harman* v. *Kingston* (1811), 3 Camp. 150, 152.

(*x*) Arnould, § 186.

(*y*) *Post*, p. 99. This is the form of policy usually called Lloyd's Policy.

(2.) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable (*z*).

Clauses are commonly inserted in policies, providing that, in the event of a deviation (*a*) or other breach of warranty (*b*), the insurance shall remain in force on payment of an additional premium.

Double Insurance.

Double insurance.

32.—(1.) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance (*c*).

(2.) Where the assured is over-insured by double insurance—

(a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act (*d*);

(b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured (*e*);

(*z*) *Hyderabad (Deccan) Co.* v. *Willoughby*, [1899] 2 Q. B. 530; 68 L. J. Q. B. 862.

(*a*) *Ibid.* The deviation clause does not apply when the ship never sailed on the insured voyage: *Simon, Israel & Co.* v. *Sedgwick*, [1893] 1 Q. B. 303; 62 L. J. Q. B. 163.

(*b*) *Greenock SS. Co.* v. *Marit. Ins. Co.*, [1903] 1 K. B. 367; 2 K. B. 657; 72 L. J. K. B. 59 (any breach of warranty).

(*c*) Arnould, § 330.

(*d*) *Newby* v. *Reid* (1763), 1 Wm. Bl. 416; *Rogers* v. *Davis* (1776), 2 Park, Ins. 8th ed., 601; Arnould, § 331.

(*e*) *Bruce* v. *Jones* (1863), 32 L. J. Ex. 132; 1 H. & C. 769. See Arnould, §§ 351, 352.

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(c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy (*f*);

(d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves (*g*).

The indemnity allowed by this Act is, as regards an unvalued policy, the insurable value determined by s. 16; as regards a valued policy, it is, as the result of s. 27, the value fixed by the policy (*h*).

Sub-s. (2) (b) is founded on *Bruce* v. *Jones* (*i*), and together with sub-s. (2) (a) appears to have the effect of making the amount recoverable depend sometimes on the order in which claims on different policies are enforced. Thus, if a ship be insured by policy A. for 2,000*l.* and valued at 4,000*l.*, and by policy B. for 2,000*l.*, valued at 3,000*l.*, and there be a total loss, the assured can recover 2,000*l.* on policy B., and then claim 2,000*l.* on policy A. But if he first receives from the underwriters on policy A. 2,000*l.*, the sum insured by that policy, then under sub-s. (2) (b) he can only claim on policy B. the difference between 2,000*l.* and the amount of the valuation (3,000*l.*), *i.e.*, 1,000*l.* (*k*).

Double insurance only arises when two or more policies are effected on the same interest. When policies are effected to cover different interests, there can be no right of contribution among the underwriters (*l*), but the principle of subrogation (*m*)

(*f*) Arnould, § 330; 2 Park, Ins. 8th ed. p. 600.

(*g*) For the right of contribution, see s. 80, *post*, p. 81. As to the adjustment of contribution between underwriters on policies with different valuations, see Arnould, § 354.

(*h*) See s. 67 (1), *post*, p. 79. As to return of premium in the case of over-insurance, see ss. 82, 84, *post*, pp. 92—95; Arnould, §§ 332, 1259—1260.

(*i*) (1863), 32 L. J. Ex. 132; 1 H. & C. 769.

(*k*) *Bruce* v. *Jones*, *ibid.* See Arnould, § 351.

(*l*) Arnould, § 333; *per* Cotton, L. J., *North British, &c. Ins. Co.* v. *London Liverpool and Globe Ins. Co.* (1877), 5 Ch. D. 569, 583; 46 L. J. Ch. 537.

(*m*) See s. 79, *post*, p. 88.

may apply, and it will limit the amount ultimately paid by all the underwriters to the indemnity allowed by the Act (*n*). Sect. 33.

Warranties, &c.

33.—(1.) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts (*o*). Nature of warranty.

(2.) A warranty may be express (*p*) or implied (*q*).

(3.) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not (*r*). If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date (*s*).

The word "warranty" is used in the Act, as is stated in sub-s. (3), to denote a condition the non-fulfilment of which avoids the contract, not a warranty in the ordinary legal sense, as meaning a term of the contract, or collateral agreement, the breach of which merely gives a right to damages (*t*). The use of the word "warranty" in marine insurance to denote a condition is, however, well established. It is also used in

(*n*) Arnould, §§ 333, 1237, 1238.

(*o*) Arnould, § 628. An example of a warranty that something shall or shall not be done is a warranty that the ship shall or shall not sail before a certain date; of a warranty affirming the existence of a particular fact is one that the ship was "well" on a given day: see s. 38, *post*, p. 47.

(*p*) See s. 35, *post*, p. 43.

(*q*) Arnould, § 30. As to the warranties which are implied, see ss. 37, 39, 40, 41, *post*, pp. 46—53.

(*r*) Arnould, §§ 632, 635; *De Hahn* v. *Hartley* (1786), 1 T. R. 343; affd. (1787), 2 T. R. 186, n.

(*s*) Arnould, §§ 633—635.

(*t*) See the definition in s. 62 (1) of the Sale of Goods Act, 1893; Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 47; Chalmers, Sale of Goods Act, Appendix II., note A.

Sect. 33. another sense, *i.e.*, to denote a clause creating an exception to the risks undertaken by the insurer, *e.g.*, the clause "warranted free from particular average" (*u*). The discharge of the insurer by a breach of a warranty prevents the assured from recovering for a subsequent loss, even though the breach has been remedied before loss (*x*), or though the loss is in no way connected with the breach of the warranty (*y*). A breach of a warranty may, however, be waived (*z*).

It has been a moot point whether the breach of an express warranty which does not relate to the commencement of the risk, avoids the policy *ab initio*, or only from the time of the breach. Lord Mansfield's view was apparently that the contract was void *ab initio*, and Arnould adopted his view. The opposite view was taken by Phillips, and the law is now settled by s. 33 (3) of the Act in accordance with the opinion of the latter (*a*).

When breach of warranty excused.

34.—(1.) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract (*b*), or when compliance with the warranty is rendered unlawful by any subsequent law (*c*).

(*u*) Arnould, § 630. See s. 76, *post*, p. 85.

(*x*) S. 34 (2), *infra*.

(*y*) *Hibbert* v. *Pigou* (1783), 1 Marshall, Ins. 3rd ed. 375; 2 Park, Ins. 8th ed. 694; Arnould, § 633.

(*z*) S. 34 (3), *infra*.

(*a*) See *Hibbert* v. *Pigou* (1783), 1 Marshall, Ins. 3rd ed. 375; Arnould, §§ 632, 634. Cf. 1 Phillips, ss. 764, 771. And see also *Baines* v. *Holland* (1855), 24 L. J. Ex. 204; 10 Exch. 802.

(*b*) Arnould, § 636. Thus if a ship were insured during war with a warranty that she should sail with convoy, and peace were concluded before the time of sailing, compliance with the warranty would be unnecessary: *ibid.*

(*c*) This agrees with the view of Arnould (§ 636), and of Phillips (vol. 1, s. 769), founded on *Brewster* v. *Kitchin* (1698), 1 Ld. Raym. 321. Mr. Arthur Cohen has, however, pointed out that *Brewster* v. *Kitchin* merely decided that the performance of a stipulation or promise is dispensed with, if it be rendered unlawful by subsequent legislation, and that the dicta of these writers do not agree with the general rule of law, viz., that where a contract is made subject to a condition, compliance with which is rendered unlawful by subsequent legislation, the contract is voidable: see Law Quarterly Review, April, 1905; and Arnould, § 636.

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(2.) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss (*d*).

(3.) A breach of warranty may be waived by the insurer (*e*).

Express warranties.

35.—(1.) An express warranty may be in any form of words from which the intention to warrant is to be inferred (*f*).

(2.) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy (*g*).

(3.) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith (*h*).

As we have seen, it is not necessary that the word "warranty" or "warranted" should be used to constitute a warranty, and the fact that either of these words appears in a stipulation in

(*d*) Arnould, §§ 633, 688. See *De Hahn* v. *Hartley* (1786), 1 T. R. 343; affirmed (1787), 2 T. R. 186, n. (ship warranted to have sailed with 50 hands, sailed with 46, and took 6 additional hands on board before loss); *Quebec Mar. Ins. Co.* v. *Commercial Bank of Canada* (1870), L. R. 3 P. C. 234; 39 L. J. P. C. 53 (ship unseaworthy by reason of a defect in a boiler which had been repaired before loss).

(*e*) Arnould, § 690; *Weir* v. *Aberdein* (1819), 2 B. & Ald. 320, as explained in *Quebec Mar. Ins. Co.* v. *Commercial Bank of Canada, supra; Provincial Ins. Co. of Canada* v. *Leduc* (1874), L. R. 6 P. C. 224; 43 L. J. P. C. 49 (acceptance of notice of abandonment with knowledge of breach of warranty a waiver).

(*f*) Arnould, § 630.

(*g*) Arnould, § 629; *Kenyon* v. *Berthon* (1778), 1 Dougl. 12, n.; *Pawson* v. *Burnevelt* (1779), *ibid.*; *Pittegrew* v. *Pringle* (1832), 3 B. & Ad. 314; *Graham* v. *Barras* (1834), 5 B. & Ad. 1011. It is now a regular practice to have additional clauses printed on slips of paper fastened with gum to the policy, and it is apprehended that these clauses are "included in, or written upon the policy," within the meaning of this sub-section. See Arnould, § 629; and Lord Halsbury's judgment in *Bensaude* v. *Thames & Mersey Mar. Ins. Co.*, [1897] A. C. 612; 66 L. J. Q. B. 666; but cf. *Bize* v. *Fletcher* (1779), 1 Dougl. 12, n.

(*h*) *Quebec Mar. Ins. Co.* v. *Commercial Bank of Canada* (1870), L. R. 3 P. C. 234; 39 L. J. P. C. 53; *Sleigh* v. *Tyser*, [1900] 2 Q. B. 333; 69 L. J. Q. B. 626.

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the policy does not necessarily make it a warranty (*i*). The words "to sail," or "in port," on such a day, would be a warranty as much as any formal clause (*k*), and even the description of a vessel in a policy as "an American ship" has been held to be a warranty that her nationality was as described (*l*).

The meaning of an express warranty is to be ascertained by the broad rules of construction which apply to commercial documents in general (*m*). Thus, a clause "warranted no iron" has been held to cover steel (*n*), and the expression "seamen" has been held to include boys, as well as adult mariners (*o*).

Warranty of neutrality.

36.—(1.) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk (*p*).

(*i*) *Ante*, p. 41.

(*k*) Arnould, § 630. For the construction of warranties as to the time of sailing, see *ibid.* §§ 641—653; for warranties of safety, see s. 38, *post*, p. 47.

(*l*) *Baring* v. *Claggett* (1802), 3 B. & P. 201; *S. C.* (1804), 5 East, 398.

(*m*) Arnould, §§ 637, 638; *Hart* v. *Standard Mar. Ins. Co.* (1889), 22 Q. B. D. 499; 58 L. J. Q. B. 284.

(*n*) *Ibid.*

(*o*) *Bean* v. *Stupart* (1778), 1 Dougl. 11. As to the meaning of "warranted uninsured," see *Roddick* v. *Indemnity Mutual Mar. Ins. Co.*, [1895] 1 Q. B. 836; 2 Q. B. 380; 64 L. J. Q. B. 733.

(*p*) Arnould, §§ 656, 657; *Woolmer* v. *Muilman* (1763), 1 W. Bl. 427; *Garrels* v. *Kensington* (1799), 8 T. R. 230; *Eden* v. *Parkinson* (1781), 2 Dougl. 732. For what constitutes neutral character, see Arnould, §§ 90—100, 657—660. The broad rule is that, for commercial purposes, the national character of an individual, and therefore in general the character of his property, depends on his domicil. "All persons who reside and carry on business in a country . . . . must, for the purposes of trade, be considered as belonging to that country": *per* Lord Kenyon, in *Tabbs* v. *Bendelack* (1801), 4 Esp. 109. But property connected with a trading establishment in a hostile country, or in transit to a hostile country under a contract made in time of war, and the produce of an enemy's colony, shipped thence, have been held, under the English Prize Law, to be belligerent property: see Arnould, §§ 658—660. The question of the national

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(2.) Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers (*q*) to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers (*r*). If any loss occurs through breach of this condition, the insurer may avoid the contract.

character of the property of trading corporations has become an important one. It seems clear that a company is considered to be a subject of the State under whose laws it is incorporated, whatever be the nationality of its shareholders: see the judgments in *Janson* v. *Driefontein Consolidated Mines, Ltd.*, [1900] 2 Q. B. 339; [1901] 2 K. B. 419; [1902] A. C. 484; 71 L. J. K. B. 857. See also *per* Phillimore, J., in *Robinson Gold Mining Co.* v. *Alliance Ins. Co.*, [1901] 2 K. B. 919, 923; 70 L. J. K. B. 892; cf. *Nigel Gold Mining Co.* v. *Hoade*, [1901] 2 K. B. 849; 70 L. J. K. B. 1006, in which Mathew, J., held that a gold mining company, registered in Natal, whose only property was a gold mine in the Transvaal, was not an alien enemy by reason of a supplemental registration in the Transvaal (the object of which was to enable it to sue or be sued in its corporate name). The further question may, however, arise whether a company can, in relation to its national character in time of war, have a commercial domicil elsewhere than in the country under whose laws it is incorporated, and on this question there is scarcely any authority. In *Janson* v. *Driefontein Gold Mining Co.*, *supra*, Lord Lindley seems to suggest ([1904] A. C. at p. 505) that in time of war the place of business of a company would be the important point. According to the recent decision of the House of Lords in *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] A. C. 455; 75 L. J. K. B. 858, a foreign corporation may "reside" in this country for the purpose of being liable to pay income tax. As to acts in the course of the voyage which are breaches of the warranty of neutrality (including blockade-running, the carriage of contraband goods, and resistance to the right of search), see Arnould, §§ 664—674.

(*q*) *I.e.*, such papers as are required by the general law of nations, or by treaty: Arnould, §§ 661—663; *Siffken* v. *Lee* (1807), 2 B. & P. N. R. 484. See also *Le Cheminade* v. *Allnutt* (1812), 4 Taunt. 367.

(*r*) Arnould, § 661. See *Bell* v. *Bromfield* (1812), 15 East, 364, that liberty to carry simulated papers precludes the underwriter from resisting payment on the ground that this was the cause of the ship's loss. There was no warranty of nationality, but this, it is apprehended, makes no difference.

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Two points are settled by sub-s. (2), which on the authorities have not been clearly established. One is that where the ship is warranted neutral, the obligation to be properly documented only exists as far as the assured can control the matter. The other is that the insurer can only avoid the contract when the loss is caused by a breach of this condition (*s*). A difficulty, however, arises on the concluding words of the sub-section. Do they imply that the assured can avoid the policy *ab initio*, so that he will not be liable for a previous partial loss, *e.g.*, damage which has been repaired; or do they only mean that he can repudiate liability for the loss which is due to the breach of the condition? It is submitted that the latter is the proper construction, otherwise the extraordinary result would follow that liability for the partial loss would depend on the contingency whether a subsequent loss unconnected therewith had or had not occurred (*t*).

There is authority for the proposition that, even without any warranty of neutrality, there is an implied condition in every policy *effected by the shipowner* that the ship, if captured, shall at the time of seizure have on board all the documents required to prove her national character, but that the insurer is not discharged unless the want of proper documents is one of the grounds of the ship's condemnation (*u*). This implied condition, where there is no warranty of neutrality, is not noticed in the Act, and it has been suggested that the authorities said to establish it are only examples of the rule that the assured cannot recover for a loss caused by his own default (*x*).

No implied warranty of nationality.

37. There is no implied warranty as to the nationality of

(*s*) This overrules *Rich* v. *Parker* (1798), 7 T. R. 705.

(*t*) This view is confirmed by the cases which lay down the principle that a shipowner cannot recover for a loss brought about by the want of proper documents: see *infra*. It was never suggested that the want of these documents affected liability for prior losses.

(*u*) See Arnould, §§ 727—732; 1 Phillips, § 745; *Bell* v. *Carstairs* (1811), 14 East, 374.

(*x*) See *per* Collins, L. J., in *Trinder* v. *Thames & Mersey Ins. Co.*, [1898] 2 Q. B. 114, 128; 67 L. J. Q. B. 666; *per* Blackburn, J., in *Dudgeon* v. *Pembroke* (1874), L. R. 9 Q. B. 581, 594; 43 L. J. Q. B. 220. S. 55 (2) (a), *post*, p. 66, embodies this rule.

a ship, or that her nationality shall not be changed during the risk (*z*). Sect. 37.

Warranty of good safety.

38. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day (*a*).

Warranty of seaworthiness of ship.

39.—(1.) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured (*b*).

(2.) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port (*c*).

(3.) Where the policy relates to a voyage which is per-

(*z*) *Clapham* v. *Cologan* (1813), 3 Camp. 382; *Dent* v. *Smith* (1869), L. R. 4 Q. B. 414; 38 L. J. Q. B. 144.

(*a*) Arnould, § 640; *Blackhurst* v. *Cockell* (1789), 3 T. R. 360. A warranty that a ship is "in port" on a given day is similarly construed: *Kenyon* v. *Berthon* (1778), 1 Dougl. 12, n.

(*b*) Arnould, § 686; *Greenock SS. Co.* v. *Marit. Ins. Co.*, [1903] 2 K. B. 657; 72 L. J. K. B. 868. For the consequences of a breach of this warranty, see ss. 33, 34, *ante*, pp. 41—43; Arnould, § 688. Under an insurance on goods "at and from H. and N.," it was held that the warranty took effect at H. with regard to the goods shipped there, and at N. (where the vessel was overloaded) in respect of the cargo taken on board at that place: *Biccard* v. *Shepherd* (1861), 14 Moo. P. C. 471. See as to this case, Arnould, § 691.

(*c*) Arnould, §§ 687, 698. A policy "at and from" attaches while the ship is in port (see Schedule I. rr. 3 and 4, *post*, pp. 101—103), provided that she is fit to encounter the perils of the port. Therefore, even though she be unseaworthy at the time of sailing, the policy is not necessarily void *ab initio*, and if it attached in port, the assured is not entitled to a return of premium: *Annen* v. *Woodman* (1810), 3 Taunt. 299. A ship is fit to encounter the perils of the port if she can lie in reasonable security until she is properly repaired and equipped for the voyage, but not if she arrives a mere wreck: *ibid.*; *Parmeter* v. *Cousins* (1809), 2 Camp. 235; *Houghton* v. *Empire Mar. Ins. Co.* (1866), L. R. 1 Ex. 206; 35 L. J. Ex. 117; *Buchanan* v. *Faber* (1899), 4 Com. Cas. 223.

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formed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage (*d*).

(4.) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured (*e*).

(5.) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure (*f*), but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness (*g*).

Seaworthiness is a relative term (*h*). The warranty may vary with the class of ship insured. Thus a river steamer insured for a sea voyage need not be made as fit for the voyage as an ocean-going vessel; she need only be made as seaworthy as is reasonably practicable by ordinary available means (*i*). Again,

(*d*) See Arnould, §§ 699—707.

(*e*) *Per cur. Dixon* v. *Sadler* (1839), 5 M. & W. 405, 414; 9 L. J. Ex. 48.

(*f*) Arnould, § 697; *Dudgeon* v. *Pembroke* (1877), 2 App. Cas. 284; 46 L. J. Q. B. 409.

(*g*) *Fawcus* v. *Sarsfield* (1856), 6 E. & B. 192; 25 L. J. Q. B. 249; *Thompson* v. *Hopper* (1858), E. B. & E. 1038; 27 L. J. Q. B. 441; *Dudgeon* v. *Pembroke, supra.* The expression "loss attributable to unseaworthiness" presumably means loss by a peril insured against attributable to unseaworthiness, otherwise the provision would be superfluous: *Fawcus* v. *Sarsfield, supra,* and *Ballantyne* v. *Mackinnon,* [1896] 2 Q. B. 455; 65 L. J. Q. B. 616, are cases in which the losses sued upon were held to be solely due to unseaworthiness. The authorities support the view that in order to prevent the assured from recovering, his conduct in sending the ship to sea in an unseaworthy state must amount to wilful misconduct: see *Thompson* v. *Hopper, supra; per* Lord Penzance in *Dudgeon* v. *Pembroke, supra;* and the judgments in *Trinder* v. *Thames and Mersey Mar. Ins. Co.,* [1898] 2 Q. B. 114; 67 L. J. Q. B. 666. It seems, however, possible that an unseaworthy ship may be sent to sea "with the privity" of the assured, without wilful misconduct on his part.

(*h*) Arnould, §§ 687, 710.

(*i*) *Burgess* v. *Wickham* (1863), 33 L. J. Q. B. 17; 3 B. & S.

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the requisites of seaworthiness may vary with the season of the year, or according to the nature of the cargo (*k*).

The warranty of seaworthiness is implied in all voyage policies, whatever be the subject-matter insured (*l*). A breach of it may, however, be waived (*m*); and an admission in the policy that the ship is seaworthy precludes the underwriter from raising the defence that the warranty has not been satisfied (*n*).

In policies on goods the warranty does not extend to the lighters in which the goods are landed (*o*).

Subject to the provisions of sub-s. (3), the warranty only relates to the commencement of the voyage; the assured does not warrant that the ship will continue seaworthy. Thus, he warrants that the ship will sail with a competent master, and a competent and adequate crew, but not that the ship will continue sufficiently manned. Nor does he warrant the continued good conduct of the master and crew during the voyage (*p*).

In order to be seaworthy the ship must be competent in hull to encounter the perils of the voyage, and properly equipped with the necessary sails, tackle, stores, provisions, medicines, and other requisites for the voyage (*q*), and if a steamship, must have an adequate supply of fuel (*r*). Overloading or want of

669; *Clapham* v. *Langton* (1864), 34 L. J. Q. B. 46. The underwriter, however, may be entitled to avoid the policy for concealment, if the fact that the ship has only been constructed for river navigation is not disclosed to him: see s. 18, *ante*.

(*k*) *Per cur. Daniels* v. *Harris* (1874), L. R. 10 C. P. 1, 6; 44 L. J. C. P. 1; *Stanton* v. *Richardson* (1875), 45 L. J. C. P. 78 (H. L.); L. R. 9 C. P. 390 (Exch. Ch.).

(*l*) Arnould, § 689.

(*m*) S. 34 (3), *ante*, p. 43.

(*n*) *Parfitt* v. *Thompson* (1844), 13 M. & W. 392; 14 L. J. Ex. 73; *Phillips* v. *Nairne* (1847), 4 C. B. 343; 16 L. J. C. P. 194.

(*o*) *Lane* v. *Nixon* (1866), L. R. 1 C. P. 412; 35 L. J. C. P. 243.

(*p*) Arnould, §§ 691, 692, 721—723; *Dixon* v. *Sadler* (1839), 5 M. & W. 405; (1841), 8 M. & W. 895. As regards the pilot, the result of the authorities seems to be that, generally speaking, a ship is not seaworthy at the outset of the voyage, or on leaving an intermediate port (treating this as a new stage), without a pilot, where one is required by law or usage for safe navigation; but that it is not a breach of the warranty to enter a port without a pilot: see Arnould, §§ 702, 704, 724; *Phillips* v. *Headlam* (1831), 2 B. & Ad. 380; 9 L. J. (O. S.) K. B. 238.

(*q*) Arnould, § 718.

(*r*) *The Vortigern*, [1899] P. 140; 68 L. J. P. 49; *Greenock*

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trim is unseaworthiness (*s*). A latent defect constitutes unseaworthiness as well as one which can be discovered (*t*). A temporary defect due to the neglect of some precaution at the time of sailing is not unseaworthiness, if the state of the ship be such that, if the master and crew do their duty, no extra danger will be incurred. Thus the ship is not unseaworthy because a port-hole has been improperly left open, unless (as where the cargo has been piled up against it) it could not, if bad weather came on, be readily closed at sea (*u*).

The rule as to the application of the warranty to a voyage in stages was for the first time distinctly laid down by Parke, B., in *Dixon* v. *Sadler* in the following terms: "If the voyage be such as to require a different complement of men, or state of equipment, in different parts of it, as if it were a voyage down a canal or river, and thence across to the open sea, it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it" (*x*). The rule was applied in the case of a policy on a voyage from Lyons to Galatz, the court holding that the warranty had been satisfied, where a steamship sailed from Lyons with a river crew and without masts and anchors, was partly equipped and manned at Arles for the sea voyage, and was fully equipped and manned for it at Marseilles (*y*). The most important application of the rule is to voyages of steamships in which it is necessary to renew the supply of coal in the course of the voyage. The voyage is considered to be divided into stages for the purpose of coaling, and the warranty attaches at each coaling port for the stage which ends at the next coaling port. The words "further equipment" in sub-s. (3) are meant to cover this application of

SS. Co. v. *Marit. Ins. Co.*, [1903] 2 K. B. 657; 72 L. J. K. B. 868. As to stages for coaling, see *infra*.

(*s*) Arnould, § 717.

(*t*) Arnould, § 688; *Lee* v. *Beach* (1762), 1 Park, Ins. 8th ed. 468; see also *The Glenfruin* (1885), 10 P. D. 103; 54 L. J. Adm. 49.

(*u*) Arnould, § 720; *Steel* v. *State Line SS. Co.* (1877), 3 App. Cas. 72; *Hedley* v. *Pinkney*, [1892] 1 Q. B. 58; 61 L. J. Q. B. 179; *Gilroy* v. *Price*, [1893] A. C. 56.

(*x*) (1839), 5 M. & W. 405, 414; 9 L. J. Ex. 48.

(*y*) *Bouillon* v. *Lupton* (1863), 33 L. J. C. P. 37; 15 C. B. N. S. 113. For the application of the rule to a Greenland whale fishing voyage, where it has been customary to take extra hands on board at Shetland, see *per* Collins, L. J., in *The Vortigern*, *infra*.

the rule, and they seem to apply to the renewal of any consumable stores, of which a sufficient supply for the whole voyage cannot be taken on board at the start (*z*).

The question may arise whether a voyage is one which is performed in different stages during which the ship requires further equipment, within the meaning of sub-s. (3), when a steamship, though intended to call at one or more ports on the voyage, starts with a reasonably sufficient supply of coal for the whole voyage insured. Has the warranty been satisfied once for all, although owing to unforeseen events the vessel finds herself at an intermediate port without enough coal for the rest of the voyage, or does it operate anew at this port? It is submitted that the wording of sub-s. (3) does not prevent the shipowner from satisfying the warranty once for all by completely equipping the vessel at the outset of the risk for the whole voyage, and that as regards any kind of equipment, he is entitled to do so; for the rule which enables a shipowner to divide the voyage into stages, for the purpose of supplementing the vessel's equipment, was only intended to be a relaxation in his favour of the more onerous obligation to equip the ship completely at the beginning of the voyage (*a*).

If the ship be not seaworthy at the commencement of an early stage, it seems to follow from s. 33 (3) (*b*) that the policy is avoided from that time, so that the assured cannot recover for a loss on a later stage, on which the ship sailed in a seaworthy condition (*c*).

The burden of proof on the issue of unseaworthiness is on the underwriter, but if soon after sailing the ship founders or becomes so leaky or disabled as to be unable to proceed, and this cannot be explained by any storm or other known cause, the proper inference is that she was unseaworthy (*d*).

(*z*) *The Vortigern*, [1899] P. 140; 68 L. J. P. 49; *Greenock SS. Co.* v. *Marit. Ins. Co.*, [1903] 2 K. B. 657; 72 L. J. K. B. 868. The regulation of the stages is not dealt with in the Act. In *The Vortigern*, Barnes, J., seemed to think that it is for the master to determine how the voyage is to be divided; according to Smith, L. J., "in each case it is a matter of proof as to where the necessity of the case requires each stage to be."

(*a*) See the judgments of Vaughan Williams and Romer, L. JJ., in *Greenock SS. Co.* v. *Marit. Ins. Co.*, *supra*.

(*b*) *Ante*, p. 41.

(*c*) Arnould seems to have held the contrary view, from which the writers dissented: see Arnould, § 700.

(*d*) Arnould, § 725; *Pickup* v. *Thames Ins. Co.* (1878), 3

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No implied warranty that goods are seaworthy.

40.—(1.) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy (*e*).

(2.) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy (*f*).

It is submitted that in sub-s. (2) the fitness of the ship to carry the goods must be decided with reference to the perils insured against by the policy. Thus if cattle be insured against mortality, the warranty is not satisfied when the appliances for ventilation are insufficient (*g*), but it is apprehended that if cattle were insured against war risks only, the ventilation of the hold would be immaterial. On a literal construction of the subsection, however, the warranty would not be satisfied even in such a policy, if the ventilation were imperfect.

Warranty of legality.

41. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner (*h*).

The authorities establish a distinction between an illegal voyage and an adventure, not in itself unlawful, in the performance of which a law relating to navigation is contravened. An insurance on an illegal voyage is void (*i*), but the contravention

Q. B. D. 594; 47 L. J. Q. B. 749; *Ajum Goolam Hassen* v. *Union Mar. Ins. Co.*, [1901] A. C. 362; 70 L. J. P. C. 34.

(*e*) *Koebel* v. *Saunders* (1864), 17 C. B. N. S. 71; 33 L. J. C. P. 310. The insurer, however, is not liable for any loss due to the inherent vice of the goods: s. 55 (2), (c), *post*, p. 67.

(*f*) *Sleigh* v. *Tyser*, [1900] 2 Q. B. 333; 69 L. J. Q. B. 626. This warranty is treated in that case as part of the warranty of seaworthiness.

(*g*) *Ibid.*

(*h*) Arnould, §§ 733, 734, 745.

(*i*) *Per* Tindal, C. J., in *Redmond* v. *Smith* (1844), 7 M. & G. 457, 474; 13 L. J. C. P. 159; Arnould, § 735. Notwithstanding s. 34 (3), the insurer, it would seem, cannot bind himself by waiving the warranty of legality. S. 3 (1), *ante*, pp. 3, 4,

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of a law of navigation in the course of a lawful adventure does not avoid the policy even when effected by the shipowner, unless the assured was a party to the unlawful act (*k*). Further, mere knowledge that there is some illegality in the performance of the voyage does not make the assured a party to the illegality when he has no control over the navigation of the ship (*l*).

In relation to an English policy, an adventure is illegal which contravenes the laws or the war policy of this country (*m*). Thus an insurance on an adventure prohibited by a British revenue law, or on an enemy's property, or on a British subject's unlicensed trade with an enemy, is void (*n*). The carriage of contraband goods to an enemy of this country or a voyage in breach of a British blockade would be an illegal adventure (*o*). The English courts, however, pay no attention to the revenue laws of foreign states (*p*), and in the case of a war between foreign states they do not regard blockade running or the carriage of contraband of war as illegal (*q*).

The Voyage.

Implied condition as to commencement of risk.

42.—(1.) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition

implies that an unlawful adventure is uninsurable: see also Arnould, § 740.

(*k*) *Wilson* v. *Rankin* (1865), L. R. 1 Q. B. 162; 35 L. J. Q. B. 87; *Dudgeon* v. *Pembroke* (1874), L. R. 9 Q. B. 581; 43 L. J. Q. B. 220.

(*l*) See *per* Coleridge, J., in *Cunard* v. *Hyde* (1858), 27 L. J. Q. B. 408; E. B. & E. 670; Arnould, § 745.

(*m*) Arnould, § 734. Illegality in any part of an integral voyage has been held to make the whole voyage illegal: see *ibid.* §§ 735—739.

(*n*) *Ibid.* §§ 741, 753, 754.

(*o*) *Ibid.* § 760. See as to contraband of war, *ibid.* §§ 761—764; as to violation of blockade, *ibid.* §§ 766—770.

(*p*) *Ibid.* § 742; *per* Lord Mansfield, *Lever* v. *Fletcher* (1780), 1 Park, Ins. 8th ed. 506.

(*q*) See *per* Lord Westbury, in *Ex parte Chavasse* (1865), 34 L. J. Bk. 17; *The Helen* (1865), L. R. 1 A. & E. 1; 35 L. J. Adm. 2; Arnould, § 760.

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that the adventure shall be commenced (*r*) within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2.) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition (*s*).

The question what is a reasonable time within the meaning of sub-s. (1) is a question of fact (*t*).

According to the authorities before the Act the adventure does not commence within a reasonable time, if there be such a delay between the making of the policy and the commencement of the risk as materially alters the risk, *e.g.*, a delay which changes it from a summer to a winter risk (*u*); and it was held to make no difference that the delay arose from circumstances beyond the control of the assured (*v*). It is submitted that the question what is a reasonable time within the meaning of sub-s. (1) must, where the delay has varied the risk, be decided with reference to the principle laid down in the decisions.

If this be correct, the difference in the effect of delay before and after the commencement of the adventure should be noticed. In the former case the insurer may avoid the policy, whether the delay be voluntary or involuntary; but delay in the course of the voyage insured does not discharge the insurer when beyond the control of the master and his employer (*x*).

(*r*) See Schedule I., rules 2—4, *post*, pp. 102—104, for the attachment of the risk under a voyage policy.

(*s*) See Arnould, § 483; *Vallance* v. *Dewar* (1808), 1 Camp. 503; and *Ougier* v. *Jennings* (1800), *ibid.* 505, n., where delay in consequence of a customary fishing expedition before a return voyage from Newfoundland was held not to avoid the contract, the underwriter being presumed to know of the usage: see *per* Tindal, C. J., in *Mount* v. *Larkins* (1831), 8 Bing. 108, 122.

(*t*) S. 88, *post*, p. 97.

(*u*) See Arnould, § 479; *Hull* v. *Cooper* (1811), 14 East, 479; *De Wolf* v. *Archangel Marit. Bank* (1874), L. R. 9 Q. B. 451; 43 L. J. Q. B. 147; *Marit. Ins. Co.* v. *Stearn*, [1901] 2 K. B. 91; 71 L. J. K. B. 86.

(*v*) *De Wolf* v. *Archangel Marit. Bank*, *supra*, where the plea was that the ship had not arrived at the *terminus a quo* within a reasonable time after the policy was effected.

(*x*) S. 49 (1) (b), *post*, p. 59.

A clause that a ship shall be held covered in case of delay at an extra premium has been held not to cover delay before the commencement of the insured voyage (*y*).

Alteration of port of departure.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach (*z*).

Sailing for different destination.

44. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach (*a*).

Change of voyage.

45.—(1.) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage (*b*).

(2.) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs (*c*).

(*y*) *Marit. Ins. Co.* v. *Stearn, supra.*

(*z*) Arnould, §§ 369, 370.

(*a*) Arnould, §§ 380, 386; *Woolridge* v. *Boydell* (1778), 1 Dougl. 16 (a). In the case of a policy "at and from" s. 44 must, it is submitted, be read together with s. 45, *i.e.* if the voyage was abandoned after the time when, according to ordinary principles, the risk has commenced "at" the *terminus a quo*, the case is one of change of voyage: Arnould, §§ 385, 386. Consequently the underwriter is liable for any loss "at" the *terminus a quo* before the voyage was changed, and the assured is not entitled to a return of premium, which he would be if the case were governed by s. 44. See as to return of premium, ss. 82—84, *post*, pp. 92—95. Where a marine policy on goods covered a land transit following a sea transit, the Court of Appeal held that to determine whether the risk attached the *terminus ad quem* of the sea voyage only had to be considered: *Simon, Israel & Co.* v. *Sedgwick*, [1893] 1 Q. B. 303; 62 L. J. Q. B. 163.

(*b*) Arnould, § 380.

(*c*) Arnould, §§ 380, 381, 386; see *Tasker* v. *Cunningham* (1819), 1 Bligh, 87.

Sect. 45. The voyage insured is a voyage from the specified place of departure (the *terminus a quo*) to the specified destination (the *terminus ad quem*), and ss. 43 and 44 are both illustrations of the principle that the policy does not attach when the ship has never been on the insured voyage (*d*).

The term "change of voyage" which in s. 45 is defined as meaning a change of destination after the commencement of the risk has hitherto been commonly applied to cases within s. 44 (*e*), and the term "abandonment of the voyage" is also commonly used to include all cases in which the insured voyage is entirely given up, whether before or after the attachment of the policy (*f*). The limited meaning given to "change of voyage" agrees, however, with a decision that a clause holding the assured covered at an extra premium in case of "change of voyage" did not apply where the ship sailed for a destination other than that mentioned in the policy (*g*).

The difference between a change of voyage and a deviation (*h*) is that to constitute a change of voyage the insured voyage must be definitely abandoned; there is only a deviation when the course of the voyage is departed from without abandoning the design of proceeding ultimately to the *terminus ad quem* (*i*).

Deviation. **46.**—(1.) Where a ship, without lawful excuse (*k*) deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs (*l*).

(*d*) Arnould, § 370.
(*e*) See Arnould, § 380.
(*f*) See Arnould, §§ 370, 380, note (*q*).
(*g*) *Simon, Israel & Co.* v. *Sedgwick*, [1893] 1 Q. B. 303; 62 L. J. Q. B. 163.
(*h*) See ss. 46, 47, *infra*.
(*i*) Arnould, § 382. See *post*, p. 57, for the different results of a change of voyage and a deviation. The writers submitted in the last edition of Arnould, § 380, note (*q*), that even though the intention of going ultimately to the specified destination be not given up, the departure from the course of the voyage may be so great as to make the voyage a different one from that described in the policy. There is some authority for this submission (see *ibid.*), but the Act does not support it.
(*k*) See § 49, *post*, pp. 59—61, for lawful excuses.
(*l*) Arnould, §§ 376, 377.

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(2.) There is a deviation from the voyage contemplated by the policy :—

(a) Where the course of the voyage is specifically designated by the policy, and that course is departed from (*m*) ; or

(b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from (*n*).

(3.) The intention to deviate is immaterial ; there must be a deviation in fact to discharge the insurer from his liability under the contract (*o*).

The different effects of a change of voyage and a deviation appear by a comparison of this section with s. 45. The insurer is not liable for a loss which has occurred after the intention to change the voyage has been definitely manifested, even though the loss takes place before the course of the ship has been altered (*p*) ; but an intention to deviate does not prevent the insurer from being liable for a loss which happens before the ship has left her course (*q*). It is immaterial, as regards the legal effect of a deviation, that the risk has not been increased, or that the loss was not connected with the deviation, or that before the loss the ship had returned to her original course (*r*).

(*m*) Arnould, § 392 ; *Elliott* v. *Wilson* (1776), 4 Brown, P. C. 470.

(*n*) Arnould, § 376. The effect of usage is to authorise a call at an intermediate port, without any leave given in the policy (see *Cormack* v. *Gladstone* (1809), 11 East, 347 (stopping at Elsinore to pay sound dues)), or even an intermediate voyage : see Arnould, § 391 ; *Vallance* v. *Dewar* (1808), 1 Camp. 503. The usage must, however, be precise and well established : Arnould, § 391. In the absence of usage the ship must (apart from any liberty to call at intermediate ports) sail direct : Arnould, § 390.

(*o*) See note (*q*), *infra*.

(*p*) Arnould, §§ 371, 380 ; *Woolridge* v. *Boydell* (1778), 1 Dougl. 16 (*a*).

(*q*) *Thellusson* v. *Fergusson* (1780), 1 Dougl. 361 ; *Kewley* v. *Ryan* (1794), 2 H. Bl. 343 ; *Heselton* v. *Allnutt* (1813), 1 M. & S. 46 ; *Hare* v. *Travis* (1827), 7 B. & Cr. 14 ; 5 L. J. (O. S.) K. B. 348.

(*r*) Arnould, § 377 ; *Davis* v. *Garrett* (1830), 6 Bing. 716 ; 8 L. J. (O. S.) C. P. 253 ; *per* Lord Campbell in *Thompson* v. *Hopper* (1856), 6 E. & B. 948 ; 26 L. J. Q. B. 22.

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It is now usual to insert a clause in policies by which the underwriter agrees to hold the assured covered at an extra premium, in case of deviation or of change of voyage (*s*).

Several ports of discharge.

47.—(1.) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation (*t*).

(2.) Where the policy is to "ports of discharge," within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation (*u*).

Delay in voyage.

48. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and if without lawful excuse (*x*) it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable (*y*).

The term "deviation" has hitherto been commonly used to include delay, which has indeed been formally held to be

(*s*) See *Hyderabad (Deccan) Co.* v. *Willoughby*, [1899] 2 Q. B. 530; 68 L. J. Q. B. 862; *Simon, Israel & Co.* v. *Sedgwick*, [1893] 1 Q. B. 303; 62 L. J. Q. B. 163.

(*t*) Arnould, §§ 394, 395; *Beatson* v. *Haworth* (1796), 6 T. R. 531; *Marsden* v. *Reid* (1803), 3 East, 572.

(*u*) Arnould, § 393; *Clason* v. *Simmonds* (1741), 6 T. R. 533, n.; see *Andrews* v. *Mellish* (1814), 5 Taunt. 502.

(*x*) See s. 49, *infra*, for lawful excuses.

(*y*) Arnould, § 376; *Hartley* v. *Buggin* (1781), 3 Dougl. 39. Thus, where a ship was insured for a trading voyage to the coast of Africa, and after she had completed her trading she remained a month on the coast for the purpose of earning salvage, the assured did not recover for a subsequent loss: *Company of African Merchants* v. *British and Foreign Mar. Ins. Co.* (1873), L. R. 8 Ex. 154; 42 L. J. Ex. 60. So, also, though there be liberty to call at a specified port, additional delay caused there by a trading foreign to the main purpose of the adventure puts an end to the insurance: *Williams* v. *Shee* (1813), 3 Camp. 469.

covered by a plea of deviation (*z*). The word "deviation" in its proper sense, however, implies the idea of space or locality, not of time, and this unnecessary use of the word has been discarded in the Act. Sect. 48.

Excuses for deviation or delay.

49.—(1.) Deviation or delay in prosecuting the voyage contemplated by the policy is excused:—

(a) Where authorised by any special term in the policy (*a*); or

(b) Where caused by circumstances beyond the control of the master and his employer (*b*); or

(*z*) *Company of African Merchants* v. *British and Foreign Mar. Ins. Co., supra;* Arnould, § 376; see also *Hyderabad (Deccan) Co.* v. *Willoughby*, [1899] 2 Q. B. 530; 68 L. J. Q. B. 862.

(*a*) There are many decisions on the construction of special clauses in the policy by which liberty is given to the ship to call at intermediate ports: see Arnould, §§ 398—411. The wording of the clauses varies, *e.g.*, liberty may be given "to call," or "to touch," or "to touch and stay," or "to touch, stay, and trade," either at certain specified ports or "at any ports or places whatsoever." The following rules for the interpretation of such clauses have been deduced from the cases (see Arnould, § 411):—

1. That the extent of the powers they confer on the ship is to be judged of, not so much by verbal criticism on the terms employed as by reference to the true scope and nature of the adventure contemplated by the policy.
2. That, however extensive the language of these clauses may be, they can never confer a power of visiting ports out of that which, upon a fair construction of the whole policy, appears to have been the course of the voyage insured as contemplated by the parties; nor can they justify the ship in visiting any port, even though within the local limits of the voyage insured, for any purpose unconnected with the main object of the adventure.
3. That if the ship visits an allowed port for an allowed purpose, no trading, breaking bulk, landing, or loading cargo, however alien to the main object of the adventure, amounts to a deviation if completed during the period of the ship's lawful stay in such port without additional delay or substantial variation of the risk.
4. If, however, such trading gives rise to delay that would not otherwise have been incurred, it will, on that ground, amount to a deviation.

(*b*) An involuntary delay or deviation, even though it alters the risk, never avoids the policy: 1 Arnould, §§ 378, 425—427.

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(c) Where reasonably necessary in order to comply with an express or implied warranty (*c*); or

(d) Where reasonably necessary for the safety of the ship or subject-matter insured (*d*); or

(e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger (*e*); or

(f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship (*f*); or

See *Smith* v. *Surridge* (1801), 4 Esp. 25 (ship detained more than four months by insufficient depth of water to cross the bar); *Grant* v. *King* (1802), 4 Esp. 175 (impossibility of obtaining an American crew in a French port); *Driscol* v. *Bovill* (1798), 1 B. & P. 313 (master forced by crew to return to home port); *Scott* v. *Thompson* (1805), 1 B. & P. N. R. 181 (ship detained for six weeks by a belligerent cruiser).

(*c*) *Smith* v. *Surridge* (1801), 4 Esp. 25 (delay for repairs); *Bouillon* v. *Lupton* (1863), 33 L. J. C. P. 37; 15 C. B. N. S. 113 (delay at intermediate port to make ship seaworthy for a stage of the voyage). See s. 39 (3), *ante*, p. 47.

(*d*) Thus it is excusable to put into port for necessary repairs, to recruit a disabled crew, or to procure fresh hands: 1 Arnould, §§ 429, 430; or to deviate to avoid capture: 1 Arnould, § 432; *O'Reilly* v. *Gonne* (1815), 4 Camp. 249, or to seek convoy: 1 Arnould, § 433; *D'Aguilar* v. *Tobin* (1816), Holt, N. P. 185. In *Bouillon* v. *Lupton*, *supra*, delay on the part of a river steamer in order to make a sea voyage with other ships was held to be justifiable. In one case it was held that a deviation in order to escape a peril not insured against avoided the policy: *O'Reilly* v. *Royal Exch. Ass. Co.* (1815), 4 Camp. 246. But this decision has been questioned: see 1 Arnould, § 435; 1 Phillips, § 1025; and the Act makes no distinction between a deviation to avoid a peril insured against and one to escape a peril not covered by the policy.

(*e*) This proposition has never been the subject of a judicial decision, but has for many years been accepted as correct: see Arnould, § 434. In *Scaramanga* v. *Stamp* (1880), 5 C. P. D. 295; 49 L. J. C. P. 674, it was held that a deviation to render salvage services not reasonably necessary to save the lives of those on board the ship in distress was unjustifiable.

(*f*) See Arnould, § 430. So decided in the United States: *Perkin* v. *Auguste Ins. Co.* (1855), 2 Parsons, Ins. p. 34, n.; *Peterson* v. *The Chandos* (1880), 4 F. 645. The question has not arisen in this country.

(g) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against (g). Sect. 49.

(2.) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch (h).

Assignment of Policy.

When and how policy is assignable.

50.—(1.) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss (i).

(2.) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected (k).

(g) *Vallejo* v. *Wheeler* (1774), Cowp. 143; *Ross* v. *Hunter* (1790), 4 T. R. 33. Deviation caused by the barratry of the crew may be excusable under s. 49 (1) (b).

(h) See Arnould, §§ 425, 431. Literally construed, the words "the ship must resume her course" suggest that the ship must return to the actual track from which she turned aside. Yet the deviation may have taken her to a place from which the usual or best course to her destination is a different one. It is submitted that the course ought to be determined with reference to the actual situation of the ship, and this construction agrees with the principle of the decisions that a ship driven out of a port is not obliged to return there, but may make the best of her way to the terminus of her voyage: *Harrington* v. *Halkeld* (1778), 2 Park, Ins. 8th ed. 639; *Delaney* v. *Stoddart* (1785), 1 T. R. 22.

(i) See s. 51, *infra*, for the conditions of a valid assignment before loss. After a total loss, the policy only covers the interest of the assured in the damages to which he is entitled under the policy, and the effect of a subsequent assignment is to transfer this chose in action to the assignee: 1 Arnould, § 175; *Lloyd* v. *Fleming* (1872), L. R. 7 Q. B. 299, 303; 41 L. J. Q. B. 93. See also *Swan* v. *Marit. Ins. Co.*, [1907] 1 K. B. 116; 76 L. J. K. B. 160.

(k) This sub-section reproduces, in substance, the provisions of 31 & 32 Vict. c. 86, s. 1, repealed by s. 92, *post*, p. 98. It was

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(3.) A marine policy may be assigned by indorsement thereon or in other customary manner (*l*).

Assured who has no interest cannot assign.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss (*m*).

A marine policy is not an incident of the property insured so as to follow its transfer from one party to another. In order that the purchaser of the insured property may have the benefit of the insurance, it must be assigned to him at the time, or there must be an agreement or understanding to assign it or to hold it for his benefit (*n*). Therefore when the owner of a cargo sold it, and part was lost while being landed in the buyer's lighter, and afterwards the seller assigned his policy to the buyer, the latter did not recover because at the time of the

held under that Act (though the words "arising out of the contract" were not in s. 1) that, in an action by the assignee, the insurers could not set off a debt incurred with them by the assured after the assignment: *Pellas* v. *Neptune Mar. Ins. Co.* (1879), 5 C. P. D. 34; 49 L. J. C. P. 153. It has also been held that the insurers could not, under the mutual credit clause of 12 & 13 Vict. c. 106, set off a debt due to them from the assured in an action brought by him on behalf of third parties: *De Mattos* v. *Saunders* (1872), L. R. 7 C. P. 570. At common law the assignee could only sue in the name of the assignor or of the nominal assured: see Arnould, § 176; *Sparkes* v. *Marshall* (1836), 2 Bing. N. C. 761; 5 L. J. C. P. 286.

(*l*) It is stated by Arnould that an assignment may be made by simple delivery of the policy, but the writers have been informed that the present practice is to endorse the assignment on the policy: see Arnould, § 177. Yet it may happen that the policy is handed over with the other shipping documents as security for an advance: see *De Mattos* v. *Saunders, supra;* 31 & 32 Vict. c. 81, contained a form of assignment, which was not, however, made compulsory.

(*m*) See note (*i*), *supra.*

(*n*) Arnould, § 174; *Powles* v. *Innes* (1841), 11 M. & W. 10; 12 L. J. Ex. 163. See also s. 15, *ante*, p. 19.

assignment the seller had ceased to have an interest in the subject-matter insured (*o*). Sect. 51.

The Premium.

When premium payable.

52. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium (*p*).

Policy effected through broker.

53.—(1.) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium (*q*), and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium (*r*).

(2.) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy (*s*); and where he has dealt with the person who employs him as a principal he has also a lien on the policy in respect of any

(*o*) *North of England Oil Cake Co.* v. *Archangel Marit. Ins. Co.* (1875), L. R. 10 Q. B. 249; 44 L. J. Q. B. 121.

(*p*) For the relation of the parties where the insurance is effected through a broker, see s. 53, *infra*; and for the course of business as to the execution and issue of the policy, see *ante*, p. 30.

(*q*) Arnould, §§ 106, 108.

(*r*) *Ibid.* §§ 106, 107. In practice the assured usually leaves the policy in the hands of the broker to enable him to settle claims as they arise, and the possession of the policy is *primâ facie* evidence that the broker has authority to settle for losses, and to receive the amount due from the insurer in cash: see Arnould, §§ 119, 124. The usage of Lloyd's is for the underwriter to credit the broker in account with the amount of the loss; but an assured who is not aware of the usage cannot be bound by it: Arnould, §§ 124—129; *Sweeting* v. *Pearce* (1861), 30 L. J. C. P. 109; 9 C. B. N. S. 534; *Matvieff* v. *Crosfield* (1903), 8 Com. Cas. 120.

(*s*) Arnould, § 130; *Fisher* v. *Smith* (1878), 4 App. Cas. 1; 48 L. J. Ex. 411.

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It is established, by virtue of a custom which has existed for many years, that where the insurance is effected by a broker, the insurer looks to him alone for the payment of the premium. In the ordinary course of business the premium does not become due from the broker until the 8th of the month following that in which the insurance was effected (*u*), but as between the insurer and the assured, the broker is deemed to have paid the insurer immediately, and to have borrowed from the latter the money with which he has paid it (*x*). The ordinary Lloyd's English policy contains an acknowledgment that the premium has been paid (*y*), but even where the policy, instead of such an acknowledgment, contained an express promise to the assured to pay the premium, the Court of Appeal held that the fiction of an immediate payment applied, and that the insurer could not recover the premium from the assured (*z*). Hence the broker, being deemed to have paid the premium, can at once recover the amount from the assured as money paid to his use (*a*).

The broker's lien for the premium and his charges exists whether his immediate employer is the assured or an intermediate agent, and whether the intermediate agency was known or not to him (*b*); and it makes no difference that the assured has paid the intermediary, if the latter has not paid the broker (*c*). On the other hand, the broker's general lien for the balance of his insurance account only exists where he did not have reason to believe that his employer was himself an agent (*d*); but in the

(*t*) Arnould, §§ 131, 134; *Maans* v. *Henderson* (1801), 1 East, 334; *Westwood* v. *Bell* (1815), 4 Camp. 349; *Mildred* v. *Maspons* (1883), 8 App. Cas. 874; 53 L. J. Q. B. 33.

(*u*) Arnould, § 104.

(*x*) Arnould, § 106; *Universo Ins. Co. of Milan* v. *Merchants' Mar. Ins. Co.*, [1897] 1 Q. B. 209; 2 Q. B. 93; 66 L. J. Q. B. 564.

(*y*) For the effect of this acknowledgment, see s. 54, *infra*.

(*z*) *Universo Ins. Co. of Milan* v. *Merchants' Mar. Ins. Co.*, *supra*.

(*a*) *Power* v. *Butcher* (1829), 10 B. & Cr. 347.

(*b*) 2 Phillips, § 1909, cited in *Fisher* v. *Smith* (1878), 4 App. Cas. 1; 48 L. J. Ex. 411; Arnould, § 130.

(*c*) *Fisher* v. *Smith*, *supra*.

(*d*) *Maans* v. *Henderson* (1801), 1 East, 334; *Snook* v. *Davidson* (1809), 2 Camp. 218; *Lanyon* v. *Blanchard* (1811), 2 Camp. 597;

absence of reasonable proof to the contrary, it will be presumed that the broker believed his immediate employer to be a principal (*e*). Sect. 53.

The broker's general lien is only for the balance of his insurance account; it does not extend to transactions between him and his employer, having no relation to insurance (*f*).

54. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker (*g*). Effect of receipt on policy.

Loss and Abandonment.

55.—(1.) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against (*h*). Included and excluded losses.

Westwood v. *Bell* (1815), 4 Camp. 349; *Cahill* v. *Dawson* (1857), 26 L. J. C. P. 253; 3 C. B. N. S. 106.

(*e*) *Westwood* v. *Bell, supra.*

(*f*) Arnould, § 134.

(*g*) Arnould, §§ 106, 107; *Dalzell* v. *Mair* (1808), 1 Camp. 532; *Power* v. *Butcher* (1829), 10 B. & Cr. 340; *Universo Ins. Co. of Milan* v. *Merchants' Mar. Ins. Co.*, [1897] 2 Q. B. 93; 66 L. J. Q. B. 564, *ante*, p. 64. *Foy* v. *Bell* (1811), 3 Taunt. 493; and *Mavor* v. *Simeon* (1810), *ibid.* 497, show that if credit for the premiums be obtained by fraud on the part of the assured, or of the assured and the broker jointly, the acknowledgment is not conclusive.

(*h*) "*Causa proxima non remota spectatur*": see Arnould, §§ 783—801, 818—822. It is a principle which is strictly applied to cases of marine insurance. Where there is a succession of causes, only the last must be looked to, and the others rejected, although the result would not have been produced without them. The correct application of this principle has often been found very difficult, and it has led to strange results, especially in claims for loss of freight: see Arnould, §§ 785—789; and cases cited in note (*k*), *infra*, to which should be added *Brankelow SS. Co.* v. *Canton Ins. Office*, [1899] 2 Q. B. 178; 68 L. J. Q. B. 811; affd. in House of Lords, *sub nom. Williams* v. *Canton Ins. Office*, [1901] A. C. 462; 70 L. J. K. B. 962. It appears,

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(2.) In particular,—

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew (*i*);

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against (*k*);

nevertheless, that there may be more than one proximate cause of a loss—*e.g.*, both "collision with any object" and "perils of the sea" may be the proximate causes of the sinking of a vessel: see *Reischer* v. *Borwick*, [1894] 2 Q. B. 548; 63 L. J. Q. B. 753; Arnould, § 822. There is substantial authority for the proposition that the rule is less stringently applied in cases of barratry: Arnould, § 858.

(*i*) See Arnould, §§ 798—801; *Trinder* v. *Thames and Mersey Mar. Ins. Co.*, [1898] 2 Q. B. 114; 67 L. J. Q. B. 666, in which the Court of Appeal decided that negligence even of the assured himself, unless it amounted to wilful misconduct or *dolus*, would not preclude him from recovering. See, however, s. 78 (4), *post*, p. 87.

(*k*) Arnould, § 824. Delay is not a peril insured against. If, therefore, a loss is proximately caused by delay, and is only remotely due to a peril insured against, the rule of "*causa proxima*" prevents the assured from recovering. It is, moreover, difficult to see how delay can ever be the proximate cause of a loss on ship; it may indeed perhaps be the cause of a loss to the shipowner, but this is not what an underwriter insures against: see *Field SS. Co.* v. *Burr*, [1899] 1 Q. B. at p. 590; 68 L. J. Q. B. 426; *Shelbourne* v. *Law Investment Ins. Corpn.*, [1898] 2 Q. B. 626; 67 L. J. Q. B. 944. As to goods, some cases which may be thought to illustrate the rule are more properly regarded as instances where the proximate cause of the loss has been the inherent vice of the thing insured: see *Pink* v. *Fleming* (1890), 25 Q. B. D. 396; 59 L. J. Q. B. 559 (fruit spoiled owing to delay due to a collision). The rule is only stated in the Act with respect to ship and goods. With respect to freight the case is somewhat different, inasmuch as in a policy on freight the insurer does necessarily insure not against damage, but against a purely personal loss; and it appears from *Jackson* v. *Union Mar. Ins. Co.* (1874), L. R. 10 C. P. 125; 44 L. J. C. P. 27, that where a peril of the sea prevents the shipowner from placing his

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(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils (*l*).

Partial and total loss.

56.—(1.) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss (*m*).

vessel at the disposal of the charterer in time to perform the adventure as contemplated, and the latter then by reason of such delay justifiably refuses to load, the loss of freight will be deemed to have been proximately caused by the peril insured against, and therefore to be recoverable under the freight policy. From the principle of this decision, however, are to be distinguished cases where the loss of freight is directly caused by the exercise of a right of cancellation, or other similar right specially given by the charterparty. In such cases the loss is declared to be due not to a peril insured against, though such a peril may have brought into operation the exercise of the right, but to the exercise of the right itself. See *Mercantile SS. Co.* v. *Tyser* (1880), 7 Q. B. D. 72; and for illustrations of the same principle, see *Inman* v. *Bischoff* (1882), 7 App. Cas. 670; 52 L. J. Q. B. 169; and *In re Jamieson and Newcastle, &c. Assn.*, [1895] 2 Q. B. 90; 64 L. J. Q. B. 560; with which contrast *The Alps*, [1893] P. 109; 62 L. J. Adm. 59; and *The Bedouin*, [1894] P. 1; 63 L. J. Adm. 30.

(*l*) As to wear and tear, see Arnould, §§ 775—777; as to leakage and breakage, both ordinary and extraordinary, *ibid.* § 779; as to inherent vice, *ibid.* §§ 778, 781; damage to the hull by rats is considered ordinary wear and tear, but *secus* where damage is done owing to incursion of sea water through a hole gnawed by rats, *ibid.* §§ 777, 825; *Hamilton* v. *Pandorf* (1887), 12 App. Cas. 518; 57 L. J. Q. B. 24. As to injury to machinery, see *Thames and Mersey Mar. Ins. Co.* v. *Hamilton* (the *Inchmaree Case*) (1887), 12 App. Cas. 484; 56 L. J. Q. B. 626; *Oceanic SS. Co.* v. *Faber* (1906), 11 Com. Cas. 179 (construction of the "*Inchmaree* clause"); Arnould, § 861.

(*m*) As to total loss of part, see s. 76 (1), *post*, p. 85; Arnould, §§ 1082—1086. Unless the policy can be construed to intend a separate insurance on several articles, a total loss of part is only a partial loss. For partial losses, see ss. 64—66, *post*, pp. 75—79.

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(2.) A total loss may be either an actual total loss (*n*), or a constructive total loss (*o*).

(3.) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss (*p*).

(4.) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss (*q*).

(5.) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total (*r*).

Actual total loss.

57.—(1.) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2.) In the case of an actual total loss no notice of abandonment need be given.

As to actual, or absolute, total loss, see Arnould, Part III., c. 6. There must be either total destruction or complete and irretrievable deprivation. Under the former head is included, in the case of perishable articles, a loss of species (*s*); and such articles will be considered as having lost their species if on arrival they are, through putrefaction or otherwise, incapable of being used for their proper purpose and unmerchantable, though they may still be outwardly recognisable (*t*).

Before this Act became law, if a vessel was so much damaged

(*n*) See s. 57, *infra*.

(*o*) See s. 60, *infra*.

(*p*) Arnould, §§ 902, 1091. The nature of the contract of bottomry does not admit of a constructive total loss under a policy on a bottomry loan: *ibid.* § 1137.

(*q*) Arnould, § 1284.

(*r*) Arnould, § 780; see *Spence* v. *Union Mar. Ins. Co.* (1868), L. R. 3 C. P. 427; 37 L. J. C. P. 169.

(*s*) *Roux* v. *Salvador* (1836), 3 Bing. N. C. 266; 7 L. J. Ex. 328.

(*t*) *Asfar* v. *Blundell*, [1896] 1 Q. B. 123; 65 L. J. Q. B. 138.

(though not actually destroyed) by perils insured against, as only to be repairable at a cost exceeding her repaired value, and in this condition was justifiably sold, there was held to be an absolute total loss (*u*).

On a similar principle, where perishable goods were so much damaged that it was impossible for them to arrive at their destination, and they were justifiably sold at a port of distress, the Court of Exchequer Chamber held that the case was one of an actual total loss (*x*). There are no words in the Act giving effect to these decisions. It is possible that similar facts would be held to constitute a constructive total loss under s. 60, sub-s. (1), in respect of which by virtue of s. 62, sub-s. (7), no notice of abandonment is necessary. Unless this be so, the result is that such cases are not covered by the definitions in the Act either of actual, or of constructive, total losses. These definitions, however, need not necessarily be regarded as exhaustive.

The wording of this section does not appear to be particularly well adapted to cases of loss of freight, profits, commissions, &c. (*y*).

Missing ship.

58. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed (*z*).

Effect of transhipment, &c.

59. Where, by a peril insured against (*a*), the voyage is interrupted at an intermediate port or place, under such

(*u*) See *Idle* v. *Royal Exchange Ass. Co.* (1819), 8 Taunt. 755; Arnould, § 1055. For the circumstances in which a sale is justifiable, see *ibid.* §§ 201—206, 1113—1122.

(*x*) *Roux* v. *Salvador, supra;* see *Cossman* v. *West* (1887), 13 App. Cas. at pp. 174, 181; 57 L. J. P. C. 17.

(*y*) See, as to these, Arnould, §§ 1087—1090.

(*z*) See Arnould, §§ 813, 814, 1048. As to the cause of loss, the presumption will be that the vessel has foundered at sea: *Houstman* v. *Thornton* (1816), Holt, N. P. 242; *Koster* v. *Reed* (1826), 6 B. & Cr. 19.

(*a*) If these words mean that where the transhipment is made of necessity but not owing to a peril insured against, the liability of the insurer does not continue, they introduce an exception to such liability for which, before this Act, there was no authority. For instance, if goods insured against fire only are necessarily transhipped owing to perils of the sea, does not the insurer continue liable?

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circumstances as, apart from any special stipulation in the contract of affreightment (*b*); to justify the master in landing and re-shipping the goods or other moveables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues (*c*), notwithstanding the landing or transhipment.

For the powers and duties of the master with respect to transhipment, &c. of cargo, see Arnould, §§ 206—212. As to the continued liability of the insurer where the transhipment takes place under licence or of necessity (but not otherwise), see Arnould, §§ 191, 192, 468.

This section appears to deal only with insurance of goods: as to the continued liability of insurer of freight, see Arnould, § 1168.

Constructive total loss defined.

60.—(1.) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred (*d*).

(2.) In particular, there is a constructive total loss—

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods,

(*b*) A transhipment may be justified as between the shipowner and the cargo-owner, owing to express provisions in the contract of affreightment. As, however, the insurer is no party to this contract, the transhipment must be otherwise justifiable if his liability is to continue.

(*c*) It is probable that the insurer is liable for loss occurring in the course of transhipment, landing, or re-shipment, as well as for losses that take place on the substituted vessel: Arnould, § 468.

(*d*) As to constructive total loss, see Arnould, Part III. c. 7. This section does not appear to deal with constructive total loss of freight, as to which, see Arnould, §§ 1161—1181; *Rankin* v. *Potter* (1873), L. R. 6 H. L. 83, 102; 42 L. J. C. P. 169; *Popham* v. *St. Petersburg Ins. Co.* (1904), 10 Com. Cas. 31.

as the case may be (*e*), or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired (*f*).

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired (*g*); or

(*e*) *E.g.*, cases of capture, arrest of ship (Arnould, §§ 1099—1110), or of goods (Arnould, §§ 1138—1141), or of stranding, when owing to the position of the ship it is highly improbable that the property insured will be recovered: Arnould, §§ 1111, 1112.

(*f*) See Arnould, §§ 1123—1137. This rule implies that in considering whether a damaged ship can be abandoned as a constructive total loss, the value of the wreck (which no doubt a "prudent uninsured owner" would take into consideration) is not to be taken into account: see Arnould, § 1124; *Angel* v. *Merchants' Mar. Ins. Co.*, [1903] 1 K. B. 811; 72 L. J. K. B. 498. Nor is pending freight to be considered: see Arnould, § 1125. "The value of the ship when repaired" is in a valued as well as in an open policy the real repaired value: *Irving* v. *Manning* (1847), 1 H. L. Cas. 287; but policies often contain a clause stipulating that the agreed valuation shall be taken to be the repaired value: see *North Atlantic SS. Co.* v. *Burr* (1904), 9 Com. Cas. 164.

(*g*) These words give further effect to the principle that the test of reparability is purely a physical or material one. The test is whether the vessel is worth repairing or not, without any regard being paid to the final incidence of the expenses of doing so: see Arnould, § 1125. No deductions from such expenses should therefore be made merely because some other interest is liable to contribute thereto, by way of general average or otherwise. But inasmuch as there may be in the future certain expenses incurred not merely on the ship's account, but by way of salvage on account of and for the benefit of other parties as well, it is only the ship's proportion of such expenses which must be taken as forming the cost of her repairs, the rest being deemed to be incurred on behalf of the other interests thereby

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(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival (*h*).

Effect of constructive total loss.

61. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the

benefited: see *Kemp* v. *Halliday* (1866), L. R. 1 Q. B. 520; 35 L. J. Q. B. 156. The words "future general average contributions" must mean contributions to which the vessel would become liable owing to future operations.

(*h*) There is substantial authority for the proposition that "loss of voyage," *i.e.*, an impossibility, due to perils insured against, of ever getting the goods to their destination in a merchantable condition, may amount to a constructive total loss of goods. Perishable goods may have suffered no direct damage, but the effect of sea perils on the ship may have been such as to render the completion of the voyage in that ship impossible, and it may be impossible, commercially or otherwise, to forward the goods in another vessel. The goods therefore, being perishable, may be prevented by the perils of the sea from arriving in safety at their destination, and may therefore be a constructive total loss: see Arnould, §§ 1142, 1150, or in some cases, according to *Roux* v. *Salvador* (1836), 3 Bing. N. C. 266; 7 L. J. Ex. 328, an actual total loss (see *ante*, p. 69). The Act does not deal with this contingency. With respect to the vexed question, what expenses are to be taken into account in case of a constructive total loss of goods, see the discussion in Arnould, §§ 1153—1158, on *Farnworth* v. *Hyde* (1866), L. R. 2 C. P. 204; 36 L. J. C. P. 33. According to the decision of the Exchequer Chamber in that case, if goods are lying damaged at a place of distress, the freight which would have been payable under the original contract, if the goods had been carried to their destination under that contract, is to be deducted from the expense of forwarding the goods from the place where they are lying to their destination, in considering whether there is a constructive total loss of the goods. Similarly, if the original ship is disabled, and her owner does not choose to carry the goods on, the whole cost of transit from the place of distress to the destination of the goods is not to be taken into account, but only the excess of the cost of transit above the original contract freight. The decision has been much criticised: see Lowndes, Ins. 133; McArthur, 2nd ed. p. 151. On a literal construction of the sub-section, the "cost of forwarding the goods to their destination" includes the entire freight which will be payable for carrying on the goods from the place of distress to their destination, not merely the excess of that freight over the freight which would have been payable under the original contract, and if this construction be adopted, it seems that *Farnworth* v. *Hyde* is now no longer law.

subject-matter insured to the insurer and treat the loss as if it were an actual total loss (*i*).

Notice of abandonment.

62.—(1.) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss (*k*).

(2.) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer (*l*).

(3.) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry (*m*).

(4.) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment (*n*).

(*i*) Arnould, §§ 1033, 1092, 1184; see *Woodside* v. *Globe Mar. Ins. Co.*, [1896] 1 Q. B. 105; 65 L. J. Q. B. 117.

(*k*) As to notice of abandonment, and abandonment itself, see Arnould, Part III. cc. 7 and 8. The object of the notice is to bind the assured by his election, and to give the underwriters an opportunity of making the most of the abandoned property: see Arnould, § 1092; *per* Cotton, L. J., in *Kaltenbach* v. *Mackenzie* (1878), 3 C. P. D. at p. 480; 48 L. J. C. P. 9. Abandonment takes place in all cases of total loss, actual or constructive, but notice is only necessary in the latter case: Arnould, § 1045. A notice of abandonment, in order to be effective, must have been justified by the state of affairs existing not only at the time when it was given, but also at the time of action brought: see Arnould, §§ 1095—1102; *Ruys* v. *Royal Exchange Ass. Corporation*, [1897] 2 Q. B. 135; 66 L. J. Q. B. 534; *Sailing Ship Blairmore* v. *Macredie*, [1898] A. C. 593; 67 L. J. P. C. 96.

(*l*) Arnould, § 1189. As to the position where there are several insurers, or where the subject-matter is not fully covered, see Arnould, §§ 1187, 1188, 1215, 1216.

(*m*) Arnould, §§ 1193—1198; see *Kaltenbach* v. *Mackenzie* (1878), 3 C. P. D. 467; 48 L. J. C. P. 9.

(*n*) See *Ruys* v. *Royal Exchange Ass. Corporation*, *supra*.

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(5.) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance (*o*).

(6.) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice (*p*).

(7.) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him (*q*).

(8.) Notice of abandonment may be waived by the insurer (*r*).

(9.) Where an insurer has re-insured his risk, no notice of abandonment need be given by him (*s*).

Effect of abandonment.

63.—(1.) Where there is a valid abandonment (*t*) the insurer is entitled to take over (*u*) the interest of the assured

(*o*) As to what amounts to an acceptance, see Arnould, §§ 1199—1200; *Provincial Ins. Co. of Canada* v. *Leduc* (1874), L. R. 6 P. C. 224; 43 L. J. P. C. 49.

(*p*) Arnould, § 1199; *Smith* v. *Robertson* (1814), 2 Dow, 474.

(*q*) See Arnould, §§ 1062, 1163, 1191. *E.g.*, after a vessel has been sold, and in most cases of total loss of freight: see *Rankin* v. *Potter* (1873), L. R. 6 H. L. 83; 42 L. J. C. P. 169. Cf. *Popham* v. *St. Petersburg Ins. Co.* (1904), 10 Com. Cas. 31, 33, where Walton, J., apparently disallowed a claim for freight, because notice of abandonment had not been given. It is for the reason stated in this sub-section that notice is not necessary in cases of actual total loss, or in case of policies on profits or commission: see Arnould, § 1090.

(*r*) See *Houstman* v. *Thornton* (1816), Holt, N. P. 242.

(*s*) This rule is well established, but the reason for it is not quite obvious: see Arnould, § 1191; and cf. *Western Ass. Co. of Toronto* v. *Poole*, [1903] 1 K. B. at p. 385; 72 L. J. K. B. 195.

(*t*) "Abandonment" here appears to be used in its strictly correct sense, as distinguished from notice of abandonment. It takes place, as has already been pointed out (*ante*, p. 73), in all cases of total loss, actual or constructive, and takes effect as from the moment of the loss, to which point of time a "notice of abandonment" dates back: Arnould, § 1205; *Stewart* v. *Greenock Mar. Ins. Co.* (1848), 2 H. L. Cas. 159.

(*u*) "Is entitled to take over": see note (*e*), p. 89. This

in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2.) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss (*x*).

Partial Losses (including Salvage and General Average and Particular Charges).

Particular average loss.

64.—(1.) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss (*y*).

(2.) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average (*z*).

sub-section deals with the effect of abandonment solely, as distinct from subrogation.

(*x*) See Arnould, §§ 1175, 1205—1211; *Stewart* v. *Greenock Mar. Ins. Co.* (1848), 2 H. L. Cas. 159; cf. *Sea Ins. Co.* v. *Hadden* (1884), 13 Q. B. D. 706; 53 L. J. Q. B. 252. The insurer is not entitled to advance freight, nor to bill of lading freight in excess of that due under a charterparty: *The Red Sea*, [1896] P. 20; 65 L. J. Adm. 9; but he is entitled to *pro ratâ* freight, whether due from the shipowner himself or under a foreign contract of affreightment: *London Ass. Corporation* v. *Williams* (1892), 9 Times L. R. 97, 257; Arnould, § 1207.

(*y*) So much of this definition of a particular average loss as excludes a general average sacrifice (which by s. 66, sub-s. (1), is included in a general average loss) seems to be the logical result of the decision of the Court of Appeal in *Price* v. *The A1 Ships' Small Damage Assn.* (1889), 22 Q. B. D. 580; 58 L. J. Q. B. 269. This decision is criticised in Arnould, § 895, but is recognised in s. 76, sub-s. (3), of this Act.

(*z*) As to particular charges, see Arnould, §§ 869, 1008; *Kidston* v. *Empire Mar. Ins. Co.* (1866), L. R. 2 C. P. 357;

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Salvage charges.

65.—(1.) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils (*a*).

(2.) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against (*b*). Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred (*c*).

36 L. J. C. P. 156. They are usually recoverable, as such, from the insurers under the suing and labouring clause: see ss. 76 (2), 78, *post*, pp. 85, 87.

(*a*) This sub-section gives effect to the decision of the House of Lords in *Aitchison* v. *Lohre* (1879), 4 App. Cas. 755; 49 L. J. Q. B. 123: see Arnould, §§ 864, 865. This decision was severely criticised by Mr. Maclachlan in the 6th ed. of Arnould, p. 793, and Appendix to Part II. c. 3. The result of the decision is that if the particular average claim together with the salvage charges exceed the full sum insured, the excess is not recoverable from the insurers. It is to be noticed that, by sub-s. (2), this rule does not apply where the salvage services have been rendered under a contract with the salvors; in such a case the assured may recover the excess either under the suing and labouring clause as particular charges (see s. 64 (2), *supra*; and s. 78, *post*, p. 87), or as general average (see s. 66 (4) and (5), *infra*), according to circumstances. For the amount recoverable in respect of salvage charges, see s. 73, *post*, p. 84.

(*b*) In *Western Ass. Co. of Toronto* v. *Poole*, [1903] 1 K. B. 376; 72 L. J. K. B. 195, Bigham, J., held that a clause "no claim to attach for salvage charges" in a policy of re-insurance against "total loss" excluded liability under the suing and labouring clause.

(*c*) For instances of the difficulty of determining whether expenditures in the nature of salvage should be treated as particular charges, or as general average, see Arnould, §§ 966—969. The question generally is whether, and how far, the operation was undertaken in order to secure the safety of both ship and cargo, or whether it was to save the ship alone, or the cargo alone. A shipowner's liability to pay life salvage is not covered by a policy in the usual form. It is, however, sometimes specially insured against: see Arnould, § 868; *Nourse* v. *Liverpool Sailing Shipowners' Mutual, &c. Assn.*, [1896] 2 Q. B. 16; 65 L. J. Q. B. 507.

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General average loss.

66.—(1.) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2.) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure (*d*).

(3.) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law (*e*), to a rateable contribution from the other parties interested, and such contribution is called a general average contribution (*f*).

(4.) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute (*g*).

(*d*) This sub-section includes most of the requisites hitherto recognised as necessary to constitute a general average act, and a consequential claim for contribution. It is, however, to be noted that all general average acts—whether of sacrifice or of expenditure—entail the idea of sacrifice, and that a general average expenditure is generally, if not always, made, not in time of peril, but after the peril is over: see Arnould, §§ 907, note (*d*). 943. As to what sacrifices or expenditures are deemed extraordinary, see Arnould, §§ 915—917, 931 *et seq.*

(*e*) *E.g.*, no contribution in the case of jettison of deck goods (subject to certain exceptions), or of dangerous cargo, or where the vessel is brought into peril by unseaworthiness or by the negligence of the master or crew: see Arnould, §§ 918, 920—923.

(*f*) For the principles on which a general average loss should be adjusted, see Arnould, §§ 974 *et seq.* It is not clear that the same rule is applicable to expenditures as to sacrifices: *ibid.*

(*g*) This sub-section is the result of the decisions in *Dickenson* v. *Jardine* (1868), L. R. 3 C. P. 639; 37 L. J. C. P. 321; and *The Mary Thomas*, [1894] P. 108; 63 L. J. Adm. 49; see Arnould, §§ 1004, 1005. General average expenditures do not involve the loss or destruction of anything insured. The underwriter is only liable for his assured's proportion of the amount

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(5.) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer (*h*).

(6.) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against (*i*).

(7.) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions

expended, and consequently he cannot be sued until there has been some kind of adjustment. It is different with a general average sacrifice. The assured may in the first instance, as the subsection declares, recover the whole loss from the insurer, but when the ship, freight and cargo belong to the same person, it is said that the assured is deemed to have the contributions of the other interests in his pocket, and can only recover a proportionate amount from the underwriter on each: *Montgomery* v. *Indemnity, &c. Ins. Co.*, [1902] 1 K. B. 734, 741; 61 L. J. K. B. 467.

(*h*) Arnould, § 1005.

(*i*) Where a general average adjustment is made in a foreign port, the parties to the adventure, even in the absence of express words, are bound by such adjustment, if such port was the proper port for settlement, and if the adjustment was rightly settled according to the laws and usages of the foreign port, even although losses are therein treated as general average which would not be so according to the law of this country: see Arnould, §§ 993—996. In order to bind the insurers, however, it must also be shown that the loss which is declared by the foreign adjustment to be general average arose from a peril insured against: see *Harris* v. *Scaramanga* (1872), L. R. 7 C. P. at p. 496; 41 L. J. C. P. 170. By express stipulation, however, what is known as a foreign adjustment clause is commonly made part of the policy of insurance. Formerly the clause declared general average to be payable "as per foreign adjustment if so made up." This clause was held to make the insurer liable for everything stated by the foreign adjustment to be chargeable against him as general average, even though the peril which caused the loss was not covered by his policy; except perhaps in cases where such peril was expressly excepted: see Arnould, §§ 997—1003; *Harris* v. *Scaramanga, supra; De Hart* v. *Compania Anonima* "*Aurora*," [1903] 2 K. B. 503; 72 L. J. K. B. 818. The last-mentioned case decided that the underwriter was liable for a general average contribution which was

is to be determined as if those subjects were owned by different persons (*k*).

The whole subject of general average is, as Sir M. Chalmers and Mr. Owen say (*l*), in an unsatisfactory condition. It is the subject of a valuable and lengthy treatise by the late Mr. Lowndes, and is more shortly dealt with in chap. 4 of Part III. of Arnould. The general principle underlying the whole doctrine of general average is that sacrifices deliberately made of a part in order to save the whole ought to fall rateably upon the whole, instead of being borne solely by the owner of the part sacrificed, "*ut omnium contributione sarciatur quod pro omnibus datum est*" (*m*).

Measure of Indemnity.

Extent of liability of insurer for loss.

67.—(1.) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value (*mm*), or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2.) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value (*mm*) in the case of an unvalued policy.

This section introduces and defines a new conventional expression, "measure of indemnity." In marine insurance, if the

payable only in consequence of a special clause in the contract of affreightment. Since this decision a new clause has been introduced which provides that, except where York-Antwerp rules are incorporated in the contract of affreightment, general average shall be "adjusted according to the law and practice obtaining at the place where the adventure ends."

(*k*) See *Montgomery* v. *Indemnity, &c. Co.*, [1902] 1 K. B. 734; 61 L. J. K. B. 467.

(*l*) Mar. Ins. Digest, 2nd. ed. p. 98.

(*m*) See Arnould, §§ 908, 910. As to the origin of the doctrine, see Arnould, § 908, note (*e*). For the York-Antwerp Rules, which are commonly incorporated into English policies, see Arnould, § 918, note (*l*), and Appendix D.

(*mm*) See s. 16, *ante*, p. 20, for the insurable value.

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Total loss.

68. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,—

(1.) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy (*nn*) :

(2.) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured (*o*).

Partial loss of ship.

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows :—

(1.) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty (*p*) :

(2.) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such

(*n*) See s. 81, *post*, p. 91.

(*nn*) See Arnould, §§ 339 *et seq.*; *Woodside* v. *Globe Mar. Ins. Co.*, [1896] 1 Q. B. 105; 65 L. J. Q. B. 117.

(*o*) See s. 16, *ante*, p. 20.

(*p*) For the sub-section generally, see Arnould, § 1023. As to the "reasonable cost of the repairs," see *Ruabon SS. Co.* v. *London Ass. Co.*, [1900] A. C. 6; 69 L. J. Q. B. 86; *Agenoria SS. Co.* v. *Merchants' Mar. Ins. Co.* (1903), 8 Com. Cas. 212. As to the customary deduction of one-third new for old, see Arnould, §§ 1024—1030, and Appendix E. pp. 1529 and 1536, where the Rules of Practice of the Association of Average Adjusters are set out. See also Appendix D. p. 1519, for the York-Antwerp Rules, 1890. Special clauses are usually inserted in the case of iron vessels. As to the concluding words, cf. s. 77, *post*, p. 86. An assured may, under certain circumstances, recover the whole sum insured in respect of a mere partial loss: see Arnould, § 1033; *Aitchison* v. *Lohre* (1879), 4 App. Cas. 755; 49 L. J. Q. B. 123.

repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

(3.) Where the ship has not been repaired, and has not been sold in her damaged state during the risk (*q*), the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

Partial loss of freight.

70. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy (*r*).

Partial loss of goods, merchandise, &c.

71. Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows:—

(1.) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the

(*q*) The case where the ship has been sold in her damaged state is not dealt with in the Act. In such a case the Court of Appeal held, in *Pitman* v. *Universal Mar. Ins. Co.* (1882), 9 Q. B. D. 192; 51 L. J. Q. B. 561, that the amount recoverable was her value before the casualty less the amount for which she sold. But this decision, from which Brett, L. J., dissented, has been subjected to adverse criticism: see Arnould, § 1034; Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 102.

(*r*) See Arnould, §§ 878, 1041. The application of this section to time policies on the freight of a seeking ship is likely to give rise to considerable difficulties.

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part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

(2.) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:

(3.) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value (*s*):

(4.) "Gross value" means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers.

The rules set forth in this section are intended to represent the existing practice of average adjusters, which is itself in the main a deduction from the principles laid down in *Lewis* v. *Rucker* (*t*) and *Johnson* v. *Shedden* (*u*).

Apportionment of valuation.

72.—(1.) Where different species of property are insured under a single valuation, the valuation must be apportioned

(*s*) In *Francis* v. *Boulton* (1895), 65 L. J. Q. B. 153, Mathew, J., held that where damaged goods had necessarily been conditioned, the value of the conditioned goods was to be compared with the sound value to ascertain the proportion of the loss, the cost of conditioning being recoverable under the suing and labouring clause: see s. 64 (2), *ante*, p. 75; s. 78 (1), *post*, p. 87, as to the recovery of conditioning charges.

(*t*) (1761), 2 Burr. 1167.

(*u*) (1802), 2 East, 581; see Arnould, §§ 340, 1010 *et seq.*

over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2.) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

This section gives statutory recognition to a rule of practice of the association of average adjusters (*x*). The reference at the end of sub-s. (1) is to s. 16 of the Act (*y*).

General average contributions and salvage charges.

73.—(1.) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance (*z*), and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute (*a*).

(*x*) See Arnould, § 361, and Appendix E. p. 1537.

(*y*) *Ante*, p. 20.

(*z*) The contributory value, for the purpose of general average, and the insurable value, may well be different, inasmuch as the former is the value at the port of adjustment, whereas the latter is the value at the commencement of the voyage. So that even where the subject-matter is fully insured, the insurers are not liable for the whole amount of the general average contribution assessed against that subject-matter, if the contributory value is greater: see Arnould, §§ 1005, 1006; and *SS. Balmoral Co.* v. *Marten*, [1902] A. C. 511; 71 L. J. K. B. 819.

(*a*) The contributory value of a vessel is her actual value at

Sect. 73. (2.) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle (*b*).

Liabilities to third parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

The "collision" or "running-down" clause, whereby the insurer agrees to indemnify the shipowner against claims for damage by collision to another ship or its cargo, is the most common instance of the insurances referred to in this section. There is usually an express provision limiting the amount recoverable, *e.g.*, to three-fourths of the 8*l.* per ton, to which the shipowner can limit his liability under the Merchant Shipping Acts (*c*).

General provisions as to measure of indemnity.

75.—(1.) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

the time and place of adjustment. Hence, if a vessel originally worth 10,000*l.* suffers damage (whether owing to causes for which an insurer is liable or not) to the extent of 1,000*l.* prior to adjustment, her contributory value is 9,000*l.* If the amount insured is not less than 9,000*l.*, and if also the insurer is not liable for the 1,000*l.* damage, his liability in respect of the general average contribution will be assessed on the basis of the ship's value being 9,000*l.* If, however, the insurer is liable for the 1,000*l.* damage as particular average, the latter portion of this sub-section which, loosely worded as it is, gives statutory recognition to a custom of Lloyd's, seems to provide that this 1,000*l.* must be deducted from the amount insured, so that in respect of this sum he may not be obliged to pay average both general and particular.

(*b*) As to salvage charges, see s. 65, *ante*, p. 76.

(*c*) For the construction of the different collision clauses, see the cases in Arnould, §§ 792—796; and *In re Margetts and Ocean, &c. Corporation*, [1901] 2 K. B. 792; 70 L. J. K. B. 762.

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(2.) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance (*d*), or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy (*e*).

Particular average warranties.

76.—(1.) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice (*f*), unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part (*g*).

(2.) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against (*h*).

(*d*) See s. 32, *ante*, p. 39.

(*e*) See Arnould, §§ 345—347; *Rickman* v. *Carstairs* (1833), 5 B. & Ad. 651; 3 L. J. K. B. 28; *Denoon* v. *Home and Colonial Ass. Co.* (1872), L. R. 7 C. P. 341; 41 L. J. C. P. 162; *The Main*, [1894] P. 320; 63 L. J. Adm. 69; see also s. 26 (3), *ante*, p. 34.

(*f*) Such a loss is recoverable if incurred in order to avoid a peril insured against: see s. 66, sub-ss. (4), (6), *ante*, pp. 77, 78. It appears, however, not to be covered by a "total loss only" policy: see *Dixon* v. *Whitworth* (1880), 4 Asp. M. L. Cases, 327; Arnould, § 902.

(*g*) As to total loss of part, see Arnould, §§ 1082—1086. "Apportionable" in this sub-section means severable.

(*h*) As to salvage charges, see s. 65, *ante*, p. 76. They are recoverable, as is stated in this sub-section, under a "F. P. A." policy, but, according to *Dixon* v. *Whitworth*, *supra*, not under a "T. L. O." (total loss only) policy. Particular charges are defined in s. 64, *ante*, p. 75. They are recoverable under the suing and labouring clause (as to which see s. 78, *infra*) not only when the policy is free from particular average, but also when it is against total loss only: see Arnould, § 885; *Kidston* v. *Empire Mar. Ins. Co.* (1867), L. R. 2 C. P. 357; 36 L. J. C. P.

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(3.) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage (*i*).

(4.) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded (*k*).

Successive losses.

77.—(1.) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured (*l*).

(2.) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss (*m*) :

156; *Dixon* v. *Whitworth, supra*, in which Lindley, J., held, and it was apparently not disputed on appeal, that suing and labouring expenses are recoverable under a T. L. O. policy; see also *Crouan* v. *Stanier*, [1904] 1 K. B. 87; 73 L. J. K. B. 102. The "loss insured against" must be a loss which, if it did happen, would fall upon the insurers. Hence in a F. P. A. policy, a total loss must have been threatened: see Arnould, §§ 870, 871; *Great Indian Peninsular Rail. Co.* v. *Saunders* (1861), 2 B. & S. 266; 31 L. J. Q. B. 206; *Booth* v. *Gair* (1863), 15 C. B. N. S. 291; 33 L. J. C. P. 99.

(*i*) See *Price* v. *The A1 Ships' Small Damage Assn.* (1889), 22 Q. B. D. 580; 58 L. J. Q. B. 269, criticised by Mr. McArthur, Mar. Ins. 2nd ed. p. 282, and Appendix IV.; and in Arnould, § 895. Successive losses happening during the same voyage may be added together, but not, even under a time policy, losses occurring on distinct voyages: Arnould, § 893; *Stewart* v. *Merchants' Mar. Ins. Co.* (1885), 16 Q. B. D. 619; 55 L. J. Q. B. 81.

(*k*) See Arnould, §§ 896, 897.

(*l*) See Arnould, § 1032; *Le Cheminant* v. *Pearson* (1812), 4 Taunt. 367.

(*m*) See Arnould, §§ 1221—1223; *Livie* v. *Janson* (1810), 12 East, 648 (stranding followed by capture).

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Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause (*n*).

Where a partial loss takes place under one policy and a total loss under a consecutive policy, the assured may recover for both, although the partial loss be unrepaired and however extensive it may be (*o*).

Suing and labouring clause.

78.—(1.) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage (*p*).

(2.) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause (*q*).

(3.) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause (*r*).

(4.) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss (*s*).

(*n*) See s. 78, *infra*.

(*o*) *Lidgett* v. *Secretan* (1871), L. R. 6 C. P. 616; 40 L. J. C. P. 257; *Woodside* v. *Globe Mar. Ins. Co.*, [1896] 1 Q. B. 105; 65 L. J. Q. B. 117.

(*p*) See Arnould, §§ 864—874.

(*q*) This sub-section is intended to give the result of the decision of the House of Lords in *Aitchison* v. *Lohre* (1879), 4 App. Cas. 755; 49 L. J. Q. B. 123; Arnould, §§ 864, 865. The result seems to be that neither general average losses nor salvage charges are recoverable at all under a T. L. O. policy: see *ante*, p. 85, notes (*f*) and (*h*). "Salvage charges" are defined in s. 65 (2). The distinction between them and the services in the nature of salvage referred to in s. 65 (2) was drawn by Lord Blackburn in *Aitchison* v. *Lohre*, *supra*.

(*r*) See note (*h*), *ante*, p. 86.

(*s*) If this sub-section means that the right to recover is to be

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The ordinary suing and labouring clause provides that "in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery" of the ship and her cargo, without prejudice to the insurance (*t*). The term "factors, servants and assigns" is strictly limited to such persons as fulfil this description. Thus it does not include salvors acting under the maritime law independently of contract (*u*), nor as regards a policy of re-insurance does it include the first assured (*x*). It has been held that the clause is not impliedly excluded in a policy against a "total or constructive total loss only" (*y*), but in such a policy made by way of re-insurance it is excluded by a clause providing that no claim shall attach for "salvage charges" (*z*). It has also been held to be totally inapplicable to a policy against liability to a third party (*a*).

Rights of Insurer on Payment.

Right of subrogation.

79.—(1.) Where the insurer pays (*b*) for a total loss (*c*),

conditional on the performance of this duty, it seems to be new law, imposing a most serious obligation on the assured, and inconsistent with *Trinder & Co.* v. *Thames and Mersey Mar. Ins. Co.*, [1898] 2 Q. B. 114; 67 L. J. Q. B. 666; and with s. 55 (2) (a), which gives effect to the decision in that case. It is believed to be based on passages in the judgment of the Privy Council in *Currie* v. *Bombay Ins. Co.* (1869), L. R. 3 P. C. 72, at pp. 80, 81, 82; 39 L. J. P. C. 1, which certainly suggest that the assured owes such a duty to the insurer; but it was unnecessary to decide the case on this point, as the total loss for which the assured claimed, if it can be said to have occurred, was the result not of a peril insured against, but of an unjustifiable sale.

(*t*) See the policy in Schedule I., *post*, p. 99.

(*u*) *Aitchison* v. *Lohre* (1879), 4 App. Cas. 755; 49 L. J. Q. B. 123.

(*x*) *Uzielli* v. *Boston Mar. Ins. Co.* (1884), 15 Q. B. D. 11; 54 L. J. Q. B. 142.

(*y*) *Crouan* v. *Stanier*, [1904] 1 K. B. 87; 73 L. J. K. B. 102.

(*z*) *Western Ass. Co. of Toronto* v. *Poole*, [1903] 1 K. B. 376; 72 L. J. K. B. 195.

(*a*) *Cunard SS. Co.* v. *Marten*, [1903] 2 K. B. 511; 72 L. J. K. B. 754.

(*b*) A *bonâ fide* payment suffices to give a right of subrogation, though the claim be one for which the insurer is not liable: *King* v. *Victoria Ins. Co.*, [1896] A. C. 250; 65 L. J. P. C. 38.

(*c*) Where there are several insurers, the salvage is appor-

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either of the whole, or in the case of goods of any apportionable part (*d*), of the subject-matter insured, he thereupon becomes entitled to take over (*e*) the interest of the assured in whatever may remain of the subject-matter so paid for (*f*), and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter (*g*) as from the time of the casualty causing the loss.

(2.) Subject to the foregoing provisions, where the insurer

tioned amongst them according to their several subscriptions. By s. 81, *post*, p. 91, the assured is himself regarded as one of his insurers in respect of any balance which he may not have covered: see Arnould, § 1215.

(*d*) As to total loss of part, as distinct from a partial loss, see Arnould, §§ 1082—1086.

(*e*) "Becomes entitled to take over, &c." The words in earlier drafts of this Bill were "whatever may remain of the subject-matter insured is thereupon transferred to him," implying that he might become owner, and be saddled with the responsibilities of ownership, against his will. These responsibilities may be serious: for example, there are statutes throwing upon "the owner" the cost of removing useless wreckage. Probably the words in the Act embody the existing state of the law, though the point was not free from doubt. It is discussed in Arnould, § 1213.

(*f*) See s. 63, *ante*, p. 74. As to the retrospective effect of a notice of abandonment, see *The Red Sea*, [1896] P. 20; 65 L. J. Adm. 9. Where there is a constructive total loss of ship, one consequence of the abandonment of the ship to the insurer on ship is that the latter is entitled to any freight in course of being earned by the ship at the time of the casualty and subsequently earned by her: s. 63 (2). Consequently in such a case nothing remains of the subject-matter of the insurance on freight for the insurer on freight to take over.

(*g*) On the question what benefits are included in the rights which pass by subrogation to the insurer, see *Burnand* v. *Rodocanachi* (1882), 7 App. Cas. 333; 51 L. J. Q. B. 548; *Stearns* v. *Village Main, &c. Co.* (1905), 10 Com. Cas. 89; Arnould, §§ 1234—1236. The assured is not entitled to prejudice his insurer's right of subrogation by releasing his rights and remedies against other parties: *West of England Fire Ins. Co.* v. *Isaacs*, [1897] 1 Q. B. 226; 66 L. J. Q. B. 36; *Phœnix Ass. Co.* v. *Spooner*, [1905] 2 K. B. 753; 74 L. J. K. B. 792; Arnould, § 1240. Though the insurer on ship is entitled as the result of abandonment to the freight earned by the ship after the casualty (note (*f*), *supra*), he is not subrogated to the contract of affreightment: *Sea Insurance Co.* v. *Hadden* (1884), 13 Q. B. D. 706, 712; 53 L. J. Q. B. 252.

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pays (*h*) for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss (*i*).

The right of the insurer to the ownership of the thing insured upon payment for a total loss accrues to him by abandonment, and has already been sufficiently dealt with in s. 63. Abandonment is the cession of all interest therein which the assured necessarily makes to the insurer by the acceptance of such payment. It is, on the other hand, by subrogation that the insurer has the right to stand in the shoes of the assured, so as to enable the insurer, after indemnifying the assured for a loss, whether partial or total, to enforce in his own interest all remedies which the assured may have against third persons, with the object of recouping the insurer for the payment which he has made under his policy. Abandonment involves a change of property in the thing insured, and only occurs in cases of total loss. Subrogation involves no such change of property, and occurs whether the loss be total or partial. In this section the distinction between abandonment and subrogation is not made sufficiently clear. It was pointed out by Lord Blackburn in *Simpson* v. *Thomson* (*k*). There is no principle rendering it impossible for abandonment to give the underwriter more than an indemnity for the amount paid to the assured, for the thing abandoned might conceivably prove to be of more value than the amount so paid. But it is at least doubtful whether mere subrogation could have this effect (*l*), for the object of subrogation is merely to prevent the

(*h*) See note (*b*), *supra*.

(*i*) This sub-section is obviously intended to deal purely with subrogation, as distinct from abandonment, and recognises the principle that, in cases of partial loss at least, the insurer has no rights by subrogation except in so far as he has indemnified the assured. In this sub-section, as also in the previous one, the language used with reference to subrogation tends to a confusion between abandonment and subrogation.

(*k*) (1877), 3 App. Cas. at p. 292; see Arnould, § 1227.

(*l*) See the discussion on *North of England Ins. Co.* v. *Armstrong* (1870), L. R. 5 Q. B. 244; 39 L. J. Q. B. 81, in Arnould, § 1228.

assured from recovering from his underwriter for a loss which has been made good to him from other sources. It is submitted that if the words "all the rights and remedies of the assured in and in respect of that subject-matter" give an insurer who has paid for a total loss a right to obtain by subrogation more than a recoupment of what he has paid in respect of the loss, they effect a change of the law in favour of the underwriter. Sect. 79.

80.—(1.) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract. Right of contribution.

(2.) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt (*m*).

The principles of contribution laid down in this section only apply where two or more insurances are effected on the same subject, the same risk and the same interest, by or on behalf of the same assured, in which case the different policies are, as between the several underwriters, considered as making but one insurance, to which each underwriter must contribute rateably (*n*). They do not apply to cases where different persons insure in respect of distinct interests—for example, to insurances by mortgagor and mortgagee, by owner of goods and carrier. In such cases each assured may recover from his own insurer for the full amount insured, but, by subrogation, the loss is ultimately made to fall upon the insurer of the party who, as between himself and the other party, is liable to bear it (*o*).

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an Effect of under insurance.

(*m*) As to double insurance and over-insurance, see *ante*, s. 32; and Arnould, §§ 330—335.

(*n*) See *Newby* v. *Reid* (1763), 1 W. Bl. 416, *per* Lord Mansfield.

(*o*) *North British, &c. Ins. Co.* v. *London, Liverpool and Globe Ins. Co.* (1877), 5 Ch. D. 583; 46 L. J. Ch. 537.

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Return of Premium.

Enforcement of return.

82. Where the premium, or a proportionate part thereof is, by this Act, declared to be returnable,—

(a) If already paid, it may be recovered by the assured from the insurer; and

(b) If unpaid, it may be retained by the assured or his agent.

This section was necessary, owing to the well-established rule recognised in s. 53 of the Act. But for (a), it might have been contended that the premium was recoverable, not by the assured, but by the broker who had paid it. In practice, return premiums are included in the assured's claims for losses.

Return by agreement.

83. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured (*q*).

Return for failure of consideration.

84.—(1.) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality (*r*) on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(*p*) See Arnould, § 1215; see also *Duus, Brown & Co.* v. *Binning* (1906), 11 Com. Cas. 190 (apportionment of cost of litigation between insurer and assured); *The Welsh Girl* (1906), 22 Times L. R. 475 (division of sum recovered from tort feasor).

(*q*) As to return of premium by express stipulation, see Arnould, §§ 1263—1267.

(*r*) The law prior to the Act appears to have been that mere illegality of the risk was no answer to a claim for return of premium where the contract still remained executory: see Arnould, § 1254. This distinction between the cases of contracts executory and executed is ignored by the Act. So also is the

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(2.) Where the consideration for the payment of the premium is apportionable (*s*) and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3.) In particular—

(a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable (*t*);

(b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable:

Provided that where the subject-matter has been insured "lost or not lost" (*u*) and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

rule by which there was no return of premium where the policy was rendered void by the assured making an alteration in it after subscription: see Arnould, § 1256. Note that misrepresentation without fraud does not disentitle the assured to a return: Arnould, § 1256; *Anderson* v. *Thornton* (1853), 8 Exch. 425.

(*s*) As to apportionment, see Arnould, §§ 1249—1252. Where, as in a policy "at and from," one risk, though of different degrees of danger, is covered by one entire premium, apportionment is impossible. When such a policy has once attached, even for a moment, there can be no return: Arnould, § 1251; *Annen* v. *Woodman* (1810), 3 Taunt. 299.

(*t*) See note (*s*), *supra*.

(*u*) Arnould, § 1248; *Bradford* v. *Symondson* (1881), 7 Q. B. D. 456; 50 L. J. Q. B. 582. Prior to the Act, it was probably unnecessary to insert the words "lost or not lost" in order to give the policy a retrospective effect. See Arnould, § 13. But inasmuch as the Act not only here, but also in s. 6 and in the Schedule I. rule 1, appears to attach importance to them, they are now probably necessary.

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(c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering (*x*);

(d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable (*y*);

(e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable (*z*).

(*x*) The proviso gives effect to the general provisions of the Gaming Act, 1892, and by s. 4, sub-s. 2 (b), includes every wager, or p. p. i. policy, whether really intended to be a wagering contract or not. It was decided in *Allkins* v. *Jupe* (1877), 2 C. P. D. 375; 46 L. J. C. P. 824, that such a policy was illegal under the stat. 19 Geo. 2, c. 37 (hereby repealed), and that on the ground of such illegality the premium was irrecoverable.

(*y*) See s. 7, *ante*, p. 11.

(*z*) As to this sub-section, see *Fisk* v. *Masterman* (1841), 8 M. & W. 165; 10 L. J. Ex. 306; Arnould, §§ 1260, 1261, 1262. The reason for the provision "or if a claim has been paid, &c.," is not apparent, inasmuch as the insurer paying such a claim would, under s. 80, have a claim for contribution from the other insurers. Hereby and also by the provision that the assured loses his right to a return when the double insurance is effected knowingly, a change in the law appears to have been effected. The latter change seems to have been made advisedly to discourage double insurance. See Chalmers & Owen, Mar. Ins. Digest, 2nd ed. 123, note (6), 125.

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The principle in virtue of which an assured is, apart from express stipulation, entitled to a return of his premium is that if the risk which he has paid the insurer to take upon himself is never in fact thrown upon the insurer's shoulders, or not to the full extent contemplated, then there is a failure of consideration in whole or in part, in respect of which the insurer must make a return (*a*). A vessel, for instance, may never arrive at the port from which she is insured, or never sail upon the contemplated voyage; a policy may be avoided owing to the breach of some warranty, or owing to some innocent concealment or misrepresentation, or the vessel or goods may be over-insured. In all these cases there is a failure of consideration in whole or in part.

Mutual Insurance (*b*).

Modification of Act in case of mutual insurance.

85.—(1.) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance (*c*).

(*a*) See Arnould, §§ 1247—1262. For an exception resulting from the rules of a mutual insurance association, see *North Eastern, &c. Ins. Assn.* v. *Red "S." SS. Co.* (1905), 10 Com. Cas. 245; affd. (1906), 22 Times L. R. 692.

(*b*) As to mutual insurance associations, or "clubs," see *Marine Mutual Ins. Assn.* v. *Young* (1880), 4 Asp. Mar. Cases, 357, *per* Pollock, B.; and *Ocean Iron SS. Assn.* v. *Leslie* (1889), 22 Q. B. D. at p. 724, *per* Mathew, J.; Arnould, §§ 80—84. The consideration which takes the place of the premium is usually the liability of the member to pay calls in respect of the losses of other members: see *per* Lord Esher in *Lion Ins. Assn.* v. *Tucker* (1883), 12 Q. B. D. at p. 187; 53 L. J. Q. B. 185. The policies issued to members, to which the provisions of the Stamp Acts apply, generally incorporate by express reference the rules and regulations of the particular association.

(*c*) The definition of mutual insurance in this section does not agree with the mode in which mutual insurance is now carried on. In consequence of the decision that mutual insurance associations consisting of more than twenty members are illegal associations unless registered under the Companies Act, 1862, (see *In re Padstow Total Loss Assn.* (1882), 20 Ch. D. 137; 51 L. J. Ch. 344), the associations are now usually registered, and it is the company, and not as formerly the members, which is the insurer, and against which the members, as assured, have a cause of action.

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(2.) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3.) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4.) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

Supplemental.

Ratification by assured.

86. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss (*d*).

Implied obligations varied by agreement or usage.

87.—(1.) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract (*e*).

(*d*) See *Williams* v. *North China Ins. Co.* (1876), 1 C. P. D. 757; Arnould, §§ 140—143, 171—173. The agent, however, must have intended to be acting on behalf of the person or persons who subsequently claim to ratify the contract; but the identity of such person need not have been known to the agent at the time, provided it be capable of being subsequently ascertained: see *Routh* v. *Thompson* (1811), 13 East, 274; *Watson* v. *Swan* (1862), 11 C. B. N. S. 756; 31 L. J. C. P. 210; *Boston Fruit Co.* v. *British and Foreign Mar. Ins. Co.*, [1906] A. C. 336; 75 L. J. K. B. 537. A. cannot ratify a policy taken out by B., which B. originally intended for the benefit of C.: see *Byas* v. *Miller* (1897), 3 Com. Cas. 39.

(*e*) As to usages generally, see Arnould, §§ 55—72. Peculiar usages of Lloyd's will not bind an assured who is ignorant of them: see Arnould, §§ 124—129; *Sweeting* v. *Pearce* (1861), 9 C. B. N. S. 534; 30 L. J. C. P. 109; *Matvieff* v. *Crosfield* (1903), 8 Com. Cas. 120.

(2.) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement. Sect. 87.

This section, say Sir M. Chalmers and Mr. Owen (*f*), is suggested by s. 55 of the Sale of Goods Act, 1893.

88. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact. Reasonable time, &c. a question of fact.

89. Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding (*g*). Slip as evidence.

90. In this Act, unless the context or subject-matter otherwise requires,— Interpretation of terms.

"Action" includes counter-claim and set off:

"Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money (*h*):

(*f*) Mar. Ins. Digest, 2nd ed. p. 128.

(*g*) The slip is explained in Arnould, §§ 34, 102. As to its legal position in view of the Stamp Acts, see Arnould, §§ 35—40. Sect. 21 of this Act, which recognises the existing law and practice, refers expressly to the most important case when it is necessary to refer to the slip. In *Mackenzie* v. *Coulson* (1869), L. R. 8 Eq. 368, James, V.-C., held that by reason of the Stamp Act a policy could not be rectified so as to make its terms agree with the slip. In later cases, however, the judges have held that there is power to rectify: see *The Aikshaw* (1893), 9 Times L. R. 605; *Spalding* v. *Crocker* (1897), 2 Com. Cas. 189; *Empress Ass. Corporation* v. *Bowring* (1905), 11 Com. Cas. 107. Again, in *North Queensland Ins. Co.* v. *Rhenish Westphalian Ins. Co.* (21st Feb. 1901, unreported), Bigham, J., rectified a policy.

(*h*) "Freight" in insurance law has a threefold meaning (see Arnould, § 229), *i.e.*—(1) a money payment made by a charterer who hires the whole ship; (2) a payment made by the various persons who put specific goods on board; (3) the profit derivable by a shipowner from the employment of his ship to carry his own goods. The first two of these meanings are here included in the words "freight payable by a third party." As to passage-money, see Arnould, § 235.

Sect. 90.

"Moveables" means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents:

"Policy" means a marine policy.

Savings.

91.—(1.) Nothing in this Act, or in any repeal effected thereby, shall affect—

54 & 55 Vict. c. 39.

(a) The provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue;

25 & 26 Vict. c. 89.

(b) The provisions of the Companies Act, 1862, or any enactment amending or substituted for the same;

(c) The provisions of any statute not expressly repealed by this Act.

(2.) The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

Repeals.

92. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

Commencement.

93. This Act shall come into operation on the first day of January one thousand nine hundred and seven.

Short title.

94. This Act may be cited as the Marine Insurance Act, 1906.

SCHEDULES.

FIRST SCHEDULE.

Sect. 30.

Form of Policy.

Be it known that as well in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause and them, and every of them, to be insured lost or not lost, at and from upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship, upon the said ship, &c. and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandise whatsoever shall be arrived at upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Lloyd's S.G. policy.

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are

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of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter-mart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

[Sue and labour clause.]

[Waiver clause.]

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in London.

[Memorandum.]

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent., and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent. unless general, or the ship be stranded.

Rules for Construction of Policy.

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:—

Lost or not lost.

1. Where the subject-matter is insured "lost or not lost," and the loss has occurred before the contract is concluded, the

risk attaches unless, at such time, the assured was aware of the loss, and the insurer was not (*a*).

From.

2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured (*b*).

At and from. [Ship.]

3.—(a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately (*c*).

(b) If she be not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival (*d*).

(*a*) See Arnould, § 13; *Mead* v. *Davidson* (1835), 3 Ad. & E. 303; 4 L. J. K. B. 193; *Gledstanes* v. *Royal Exchange Ass.* (1864), 34 L. J. Q. B. 35; 5 B. & S. 797; *Bradford* v. *Symondson* (1881), 7 Q. B. D. 456; 50 L. J. Q. B. 582. See s. 6, *ante*, p. 11, and as to return of premium, s. 84 (3) (*b*), *ante*, p. 93.

(*b*) Arnould, § 473. The ship does not start on the voyage insured until she quits her moorings and breaks ground in a state of perfect equipment and readiness for her voyage or the initial stage thereof: *ibid.*; see also *Pittegrew* v. *Pringle* (1832), 3 B. & Ad. 514; *Hunting* v. *Boulton* (1895), 1 Com. Cas. 120; *Sea Ins. Co.* v. *Blogg*, [1898] 2 Q. B. 398; 67 L. J. Q. B. 757; and the cases on warranties as to the time of sailing, Arnould, § 643 *et seq.*

(*c*) See *Palmer* v. *Marshall* (1831), 8 Bing. 79, 317; Arnould, § 474. It is submitted that where the policy contains the words "lost or not lost" (see rule 1, *supra*) the risk attaches retrospectively, viz., during the whole stay of the ship in the port for the purposes of the insured voyage: see Arnould, § 475. It is also submitted that the rule does not apply if, at the time when the contract is made, the ship is at the *terminus a quo* for the purpose of a voyage antecedent to the insured voyage. In order to be in "good safety," it is enough that the ship is in such a condition as to be able to lie in port in reasonable security: *Parmeter* v. *Cousins* (1809), 2 Camp. 235; *Haughton* v. *Empire Mar. Ins. Co.* (1876), L. R. 1 Ex. 206; 35 L. J. Ex. 117; Arnould, § 480. See also *Lidgett* v. *Secretan* (1870), L. R. 5 C. P. 190; 39 L. J. C. P. 196. Freedom from political danger is not necessary: *Bell* v. *Bell* (1810), 2 Camp. 475. The clause which provides that the risk terminates after the ship has been moored twenty-four hours in good safety implies, however, political as well as physical safety, and liberty to discharge cargo: see Arnould, §§ 488—491.

(*d*) Arnould, § 478; *Haughton* v. *Empire Mar. Ins. Co.*, *supra*. See s. 42, *ante*, p. 53, for the implied condition that the adventure will be commenced in a reasonable time.

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[Freight.]

(c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately (*e*). If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety (*f*).

(d) Where freight, other than chartered freight, is payable without special conditions (*g*) and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo (*h*).

From the loading thereof.

4. Where goods or other moveables are insured "from the loading thereof," the risk does not attach until such goods or

(*e*) See the remarks in note (*c*), *supra*, as to the effect of the words "lost or not lost." The question when the insurable interest in freight commences (which in the cases is usually considered in connection with that of the attachment of the risk) is not specifically dealt with in the Act. See as to insurable interest in freight, Arnould, §§ 262—279. The commencement of the insurable interest in chartered freight is discussed, *ibid.* §§ 265—267, 272—279. The attachment of the risk, whatever be the words used in the particular policy, is of course subject to the assured having an insurable interest: see Arnould, § 265. As to the termination of the risk on freight, see note (*h*), *infra*.

(*f*) *Foley* v. *United Fire and Mar. Ins. Co.* (1870), L. R. 5 C. P. 155; 39 L. J. C. P. 206.

(*g*) The words "without special conditions" were inserted for the purpose of excluding advanced or other special freight: Chalmers & Owen, Mar. Ins. Digest, 2nd ed. p. 140.

(*h*) See Arnould, § 511; McArthur, 2nd ed. p. 100; and the remarks on insurable interest in note (*e*), *supra*. The writers submitted in the 7th edition of Arnould that the authorities did not justify the statement that readiness either of the ship or of the cargo is necessary for the attachment of the risk. In their opinion the cases established the rule that if some person had contracted with the shipowner to ship cargo, the risk attached at the *terminus a quo*, as soon as the shipowner began to take steps to earn the freight: see Arnould, §§ 268—271; and the cases there cited, in particular, *Truscott* v. *Christie* (1820), 2 Brod. & B. 320; and *Flint* v. *Flemyng* (1830), 1 B. & Ad. 45; 8 L. J. (O. S.) K. B. 350.

The end of the risk is not specified in the policy. When, as is usually the case, the freight is not payable until the goods are delivered, the risk no doubt continues as long as they are in the custody of the shipowner exposed to maritime perils, pro-

moveables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship (*i*).

Safely landed.

5. Where the risk on goods or other moveables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases (*j*).

Touch and stay.

6. In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination (*k*).

Perils of the seas.

7. The term "perils of the seas" refers only to fortuitous

vided there be no unreasonable delay in discharging them: Arnould, § 520.

(*i*) Arnould, § 477. Clauses which protect the goods while in transit to the ship are now commonly inserted in English policies, *e.g.*, the clause "including risk of craft to and from the vessel," and the "warehouse to warehouse" clause: see *ibid.* note (*c*). As to the attachment of the risk on goods generally, see Arnould, §§ 447—455.

(*j*) Arnould, §§ 456, 457, 462, 463. Goods may be landed within the meaning of this rule, although they have not been delivered into the hands of the consignee, *e.g.*, if placed in the usual course in a government warehouse: *Brown* v. *Carstairs* (1811), 3 Camp. 161; *Marten* v. *Nippon, &c. Ins. Co.* (1898), 3 Com. Cas. 164. It has been held that the risk ends when the assured receives the goods into his own care, as by placing them in his own lighters: *Sparrow* v. *Carruthers* (1746), 2 Str. 1236; *Strong* v. *Natally* (1804), 1 B. & P. N. R. 16; see, however, *Paul* v. *Ins. Co. of North America* (1899), 15 Times L. R. 535; Arnould, § 458. The risk also ends if the goods are placed in lighters at the *terminus ad quem* for the purpose not of being landed, but of being transhipped: *Houlder* v. *Merchants' Mar. Ins. Co.* (1886), 17 Q. B. D. 354; 55 L. J. Q. B. 420. What is a reasonable time is a question of fact (s. 88, *ante*, p. 97) depending on the nature of the trade, the main object of the adventure, and the circumstances of the port of discharge: see *Parkinson* v. *Collier* (1797), 2 Park, Ins. 8th ed. 653; Arnould, § 463. For the termination of the risk on goods, see further, Arnould, §§ 456—471.

(*k*) Arnould, § 400. For the cases on the construction of license clauses, see *ibid.* §§ 398—411. The general rule is that, however extensive the language of such a clause may be, it can never confer a power of visiting ports out of the course of the voyage insured; nor can it justify the ship in visiting any port, even though within the local limits of the voyage insured, for any purpose unconnected with the main object of the adventure: Arnould, § 411; see *ante*, note (*a*), p. 59.

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accidents or casualties of the seas. It does not include the ordinary action of the winds and waves (*l*).

Pirates.

8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore (*m*).

Thieves.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers (*n*).

Restraint of princes.

10. The term "arrests, &c., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or ordinary judicial process (*o*).

(*l*) For what is included in the term, see the judgments in *Thames and Mersey Mar. Ins. Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484; 56 L. J. Q. B. 626; *The Xantho* (1887), 12 App. Cas. 509; 56 L. J. Adm. 116; *Hamilton, Fraser & Co.* v. *Pandorf* (1887), 12 App. Cas. 518; 57 L. J. Q. B. 24. An exhaustive definition of "perils of the seas" can scarcely be given. The term, however, includes all kinds of marine casualties, such as shipwreck, foundering, stranding, collision, and every species of damage done by the immediate and fortuitous action of the winds and waves: see Arnould, § 812. Thus, if a rat gnaws a hole in a pipe, the damage done by the incursion of water is a loss by a peril of the seas: *Hamilton, Fraser & Co.* v. *Pandorf, supra;* see also *Blackburn* v. *Liverpool, &c. Co.*, [1902] 1 K. B. 290; 71 L. J. K. B. 177; but the natural result of the action of sea water on the ship or goods is not, nor is the ordinary wear and tear of a voyage: Arnould, § 825. "Perils of the seas" do not include casualties happening when the ship is not water-borne: Arnould, § 817; *Phillips* v. *Barber* (1821), 5 B. & Ald. 161; and they are confined to marine casualties: *Thames and Mersey Mar. Ins. Co.* v. *Hamilton, supra* (splitting of air chamber of donkey-engine not a peril of the seas). A casualty which is not a peril of the seas may, however, be covered by the words "all other perils," &c. (see rule 12, *infra*), as being *ejusdem generis* with a peril of the seas: see *Phillips* v. *Barber, supra*. See further as to "perils of the seas," Arnould, §§ 812—827; and *Popham* v. *St. Petersburg Ins. Co.* (1904), 10 Com. Cas. 31 (unforeseen obstruction to navigation by ice a peril of the seas).

(*m*) Arnould, § 836; *Naylor* v. *Palmer* (1854), 23 L. J. Ex. 323; 10 Exch. 382; *Nesbitt* v. *Lushington* (1792), 4 T. R. 783.

(*n*) "The theft that is insured against by name in the policy has been considered to mean that which is accompanied by violence (*latrocinium*), and not simple theft (*furtum*)": Arnould, § 837.

(*o*) The term "arrests, restraints and detainments" has a wide meaning. It is not limited to belligerent capture, but has

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11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer (*p*). Barratry.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy (*q*). All other perils.

been held to include a seizure of property by the sovereign of the assured to strengthen the resources of the State in contemplation or furtherance of war: *Aubert* v. *Gray* (1862), 3 B. & S. 163; 32 L. J. Q. B. 50; *Janson* v. *Driefontein Consolidated Mines*, [1902] A. C. 484; 71 L. J. K. B. 857; an embargo: *Rotch* v. *Edie* (1795), 6 T. R. 413; the detention of goods in a besieged town: *Rodocanachi* v. *Elliott* (1874), L. R. 9 C. P. 518; 43 L. J. C. P. 255; and the operation of a municipal law preventing the delivery of goods at their destination: *Miller* v. *Law Accident Ins. Society*, [1903] 1 K. B. 712; 72 L. J. K. B. 428. "People" means, not mobs or multitudes of persons, but the ruling power of the country: *ibid.* It is now usual to insert in ordinary policies a clause called the "F. C. S." clause, which expresses the policy to be "warranted free of capture, seizure and detention," &c.: see Arnould, § 10. This clause excepts all liability for "arrests, restraints and detainments": see *Miller* v. *Law Accident Ins. Society, supra; St. Paul, &c. Ins. Co.* v. *Morice* (1906), 11 Com. Cas. 153. See further as to warranties against capture and seizure, Arnould, §§ 903, 905; *Robinson Gold Mining Co.* v. *Alliance Ins. Co.*, [1904] A. C. 359; 73 L. J. K. B. 898.

(*p*) This definition does not profess to be exhaustive. "Barratry" is said "to comprehend not only every species of fraud and knavery covinously committed by the master with the intention of benefiting himself at the expense of his owners, but every wilful act on his part of known illegality, gross malversation, or criminal negligence, by whatever motive induced, whereby the owners or the charterers of the ship (in cases where the latter are considered owners *pro tempore*) are, in fact, damnified": Arnould, § 839. It is also said that the master's wilful non-feasance may be barratry: 2 Arnould, § 845. As barratry involves a breach of duty by the master or crew to their owner (see, however, *per* Hannen, J., in *Ionides* v. *Pender* (1872), 1 Asp. M. C. N. S. 432), it has been held that a master who is a sole owner cannot commit barratry: see *Ross* v. *Hunter* (1790), 4 T. R. 33; Arnould, § 852; but a master who is part owner can be guilty of barratry against his co-owners: *Jones* v. *Nicholson* (1854), 23 L. J. Ex. 330; 10 Exch. 28; or against his mortgagee: *Small* v. *U. K. Marine Mut. Ins. Assn.*, [1897] 2 Q. B. 311; 66 L. J. Q. B. 736. See further as to barratry, Arnould, §§ 838—859.

(*q*) Arnould, § 860. See *Thames and Mersey Mar. Ins. Co.* v. *Hamilton* (1887), 12 App. Cas. 484; 56 L. J. Q. B. 626, where

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Average unless general.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges" (*r*).

Stranded.

14. Where the ship has stranded (*s*) the insurer is liable for the excepted losses (*t*), although the loss is not attributable to the stranding (*u*), provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board (*x*).

Ship.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured (*y*).

the previous decisions on the general clause "all other perils, losses and misfortunes" are reviewed.

(*r*) See the definition of a partial loss, s. 56, *ante*, p. 67; of a general average loss, s. 66, *ante*, p. 77; of particular charges, s. 64, *ante*, p. 75. For the construction of the memorandum, in which the term "average unless general" is used, see s. 76, *ante*, p. 85; Arnould, §§ 882—900; and (as regards the effect of a stranding) rule 14, *infra*.

(*s*) In order that there may be a stranding within the meaning of the memorandum, the ship must settle down on the obstructing object for an appreciable time—a mere "touch and go" is not a stranding: *Harman* v. *Vaux* (1813), 3 Camp. 429. Moreover, there is no stranding where the ship takes the ground in the ordinary course of navigation: *Wells* v. *Hopwood* (1832), 3 B. & Ad. 20. See, further, for what is a stranding, *Letchford* v. *Oldham* (1880), 5 Q. B. D. 538; 49 L. J. Q. B. 458; Arnould, §§ 888—890.

(*t*) *I.e.*, the losses covered by the words "warranted free from . . . . average unless general, &c.," in the memorandum. See rule 13, *supra*; *Price* v. *A 1 Small Damage Assn.* (1889), 22 Q. B. D. 580; 58 L. J. Q. B. 269; Arnould, § 885.

(*u*) *Burnett* v. *Kensington* (1797), 7 T. R. 210; Arnould, § 886.

(*x*) *Roux* v. *Salvador* (1836), 3 Bing. N. C. 266, 276; 7 L. J. Ex. 328; *Thames, &c. Ins. Co.* v. *Pitts*, [1893] 1 Q. B. 476; *The Alsace Lorraine*, [1893] P. 209; 62 L. J. Adm. 107.

(*y*) Cf. s. 16, *ante*, p. 20, by which the insurable value of a ship includes also money advanced for seamen's wages. The ordinary English policy is expressed to be "upon the body, tackle, apparel, ordnance, munition, artillery, boat and other furniture of and in" the ship; and it has been established that a policy in this form covers stores, the provisions and articles of

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16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables (*z*), as well as freight payable by a third party (*a*), but does not include passage money (*b*). Freight.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board (*c*). Goods.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods (*d*).

equipment enumerated in the rule: see Arnould, §§ 218—221; Gow, 2nd ed. 46; McArthur, 2nd ed. 57; *Brough* v. *Whitmore* (1791), 4 T. R. 206 (provisions); *Hogarth* v. *Walker*, [1900] 2 Q. B. 283; 69 L. J. Q. B. 634 (dunnage mats in a grain ship). A general custom was, however, established with regard to whaling voyages, that the fishing stores and implements are not protected by an insurance in this form: Arnould, § 219. It has been doubted whether the word "ship" alone covered coal, provisions or stores: *Roddick* v. *Indemnity Mutual Mar. Ins. Co.*, *per* Lord Esher, M. R., and Smith, L. J.; [1895] 2 Q. B. 380, 383, 386; 64 L. J. Q. B. 733; see *ante*, p. 20. A time policy on "hull and machinery" has been held not to cover bunker coals, provisions or stores: *ibid.*

(*z*) *Flint* v. *Flemyng* (1830), 1 B. & Ad. 45; 8 L. J. (O. S.) K. B. 50; *Devaux* v. *I'Anson* (1839), 5 Bing. N. C. 519; 8 L. J. (N. S.) C. P. 284. See s. 90, *ante*, p. 98, for a definition of "moveables."

(*a*) This includes both freight in the strict sense of the word and chartered hire: see *Flint* v. *Flemyng*, *supra;* and Arnould, §§ 229—234. It is said that advance freight may also be insured simply as "freight": *Allison* v. *Bristol Mar. Ins. Co.* (1876), 1 App. Cas. 209, 223, 239, 251; 1 Arnould, § 233; and as the rule does not profess to be exhaustive, it does not preclude the insurance of chartered freight from being so effected.

(*b*) *Denoon* v. *Home and Colonial Ins. Co.* (1872), L. R. 7 C. P. 341; 41 L. J. C. P. 162; Arnould, § 235.

(*c*) *Ross* v. *Thwaites* (1776), 1 Park, Ins. 8th ed. 23; *Hill* v. *Patten* (1807), 8 East, 373; *Brown* v. *Stapylton* (1827), 4 Bing. 121; Arnould, § 224. Money, bullion and jewels, if shipped as merchandise, may be insured as "goods" (although they are generally described specifically), but not bank-notes or bills of exchange: Arnould, § 224. In *Wilkinson* v. *Hyde* (1858), 3 C. B. N. S. 30; 27 L. J. C. P. 116, it was not disputed that a policy on goods covered an emigrant's outfit, which, however, seems to be within the meaning of the term "personal effects."

(*d*) Arnould, §§ 225, 227; *Ross* v. *Thwaites* (1776), 1 Park, Ins. 8th ed. 23; *Backhouse* v. *Ripley* (1802), *ibid.* 24; *Da Costa* v. *Edmunds* (1815), 4 Camp. 142; *per* Lord Lyndhurst in *Blackett*

Sched. II.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 Geo. 2, c. 37....	An Act to regulate insurance on ships belonging to the subjects of Great Britain, and on merchandizes or effects laden thereon.	The whole Act.
28 Geo. 3, c. 56....	An Act to repeal an Act made in the twenty-fifth year of the reign of his present Majesty, intituled "An Act for regulating Insurances on Ships, and on goods, merchandizes, or effects," and for substituting other provisions for the like purpose in lieu thereof.	The whole Act so far as it relates to marine insurance.
31 & 32 Vict. c. 86..	The Policies of Marine Assurance Act, 1868.	The whole Act.

v. *Royal Exchange Ass. Co.* (1832), 2 Cr. & J. at p. 250; 1 L. J. (N. S.) Ex. 101. In *Apollinaris Co.* v. *Nord Deutsche Ins. Co.*, [1904] 1 K. B. 252; 73 L. J. K. B. 62, Walton, J., doubted whether the rule as to deck cargo had any application to a river voyage.

APPENDIX.

STAMP ACT, 1891 (54 & 55 VICT. c. 39).

Policies of Insurance.

91. For the purposes of this Act the expression "policy of insurance" includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression "insurance" includes assurance. Meaning of policy of insurance.

Policies of Sea Insurance.

92.—(1.) For the purposes of this Act the expression "policy of sea insurance" means any insurance (including re-insurance) made upon any ship or vessel, or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and includes any insurance of goods, merchandise, or property for any transit which includes not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance. Meaning of policy of sea insurance.

(2.) Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss, or damage, such agreement or engagement shall be deemed to be a contract for sea insurance.

93.—(1.) A contract for sea insurance (other than such insurance as is referred to in the fifty-fifth section of the Merchant Shipping Act Amendment Act, 1862) shall not be valid unless the same is expressed in a policy of sea insurance. Contract to be in writing. 25 & 26 Vict. c. 63.

(2.) No policy of sea insurance made for time shall be made for any time exceeding twelve months (*a*).

(*a*) See as to continuation clauses, 1 Edw. 7, c. 7, s. 11, *infra*.

(3.) A policy of sea insurance shall not be valid unless it specifies the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured, and is made for a period not exceeding twelve months.

Policy for voyage and time chargeable with two duties.

94. Where any sea insurance is made for a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy is to be charged with duty as a policy for a voyage, and also with duty as a policy for time.

No policy valid unless duly stamped.

95.—(1.) A policy of sea insurance may not be stamped at any time after it is signed or underwritten by any person, except in the two cases following; that is to say,

(a) Any policy of mutual insurance having a stamp impressed thereon may, if required, be stamped with an additional stamp provided that at the time when the additional stamp is required the policy has not been signed or underwritten to an amount exceeding the sum or sums which the duty impressed thereon extends to cover:

(b) Any policy made or executed out of, but being in any manner enforceable within, the United Kingdom, may be stamped at any time within ten days after it has been first received in the United Kingdom on payment of the duty only.

(2.) Provided that a policy of sea insurance shall for the purpose of production in evidence be an instrument which may legally be stamped after the execution thereof, and the penalty payable by law on stamping the same shall be the sum of one hundred pounds.

Legal alterations in policies may be made under certain restrictions.

96. Nothing in this Act shall prohibit the making of any alteration which may lawfully be made in the terms and conditions of any policy of sea insurance after the policy has been underwritten; provided that the alteration be made before notice of the determination of the risk originally insured, and that it do not prolong the time covered by the insurance thereby made beyond the period of six months in the case of a policy made for a less period than six months, or beyond the period of twelve months in the case of a policy made for a greater period than six months, and that the articles insured remain the property of the same person or persons, and that no additional or further sum be insured by reason or means of the alteration.

Penalty on assuring unless policy duly stamped.

97.—(1.) If any person—

(a) becomes an assurer upon any sea insurance, or enters into any contract for sea insurance, or directly or indirectly receives or contracts or takes credit in account for any premium or consideration for any sea insurance, or knowingly takes upon himself any risk, or renders himself liable to pay, or pays, any sum of money upon any loss, peril, or contingency relative to any sea insur-

ance, unless the insurance is expressed in a policy of sea insurance duly stamped, or

(b) makes or effects, or knowingly procures to be made or effected, any sea insurance, or directly or indirectly gives or pays, or renders himself liable to pay, any premium, or consideration for any sea insurance, or enters into any contract for sea insurance, unless the insurance is expressed in a policy of sea insurance duly stamped, or

(c) is concerned in any fraudulent contrivance or device, or is guilty of any wilful act, neglect, or omission, with intent to evade the duties payable on policies of sea insurance, or whereby the duties may be evaded,

he shall for every such offence incur a fine of one hundred pounds.

(2.) Every broker, agent, or other person neglecting or transacting any sea insurance contrary to the true intent and meaning of this Act, or writing any policy of sea insurance upon material not duly stamped, shall for every such offence incur a fine of one hundred pounds, and shall not have any legal claim to any charge for brokerage, commission, or agency, or for any money expended or paid by him with reference to the insurance, and any money paid to him in respect of any such charge shall be deemed to be paid without consideration, and shall remain the property of his employer.

(3.) If any person makes or issues, or causes to be made or issued, any document purporting to be a copy of a policy of sea insurance, and there is not at the time of the making or issue in existence a policy duly stamped whereof the said document is a copy, he shall for such offence in addition to any other fine or penalty to which he may be liable incur a fine of one hundred pounds.

FIRST SCHEDULE.

Stamp Duties on Instruments.

Policy of Sea Insurance—

	£	*s.*	*d.*
(1) Where the premium or consideration does not exceed the rate of 2*s.* 6*d.* per centum of the sum insured .	0	0	1
(2) In any other case—			
(a) For or upon any voyage—			
In respect of every full sum of 100*l.*, and also any fractional part of 100*l.* thereby insured . .	0	0	3
(b) For time—			
In respect of every full sum of 100*l.*, and also any fractional part of 100*l.* thereby insured—			
Where the insurance shall be made for any time not exceeding six months . . .	0	0	3
Where the insurance shall be made for any time exceeding six months and not exceeding twelve months	0	0	6

And *see* sections 91, 92, 93, 94, 95, 96, and 97.

FINANCE ACT, 1901 (1 EDW. 7, c. 7).

PART II.

Stamps.

Provision as to continuation clauses in policies of sea insurance. (54 & 55 Vict. c. 39.)

11.—(1.) Notwithstanding anything contained in the Stamp Act, 1891, a policy of sea insurance made for time may contain a continuation clause as defined in this section, and such a policy shall not be invalid on the ground only that by reason of the continuation clause it may become available for a period exceeding twelve months.

(2.) There shall be charged on a policy of sea insurance containing such a continuation clause a stamp duty of sixpence in addition to the stamp duty which is otherwise chargeable on the policy.

(3.) If the risk covered by the continuation clause attaches, and a new policy is not issued covering the risk, the continuation clause shall be deemed to be a new and separate contract of sea insurance expressed in the policy in which it is contained, but not covered by the stamp thereon, and the policy shall be stamped in respect of that contract accordingly, but may be so stamped without penalty at any time not exceeding thirty days after the risk has so attached.

(4.) For the purposes of this section, the expression "continuation clause" means an agreement to the following or the like effect, namely, that in the event of the ship being at sea, or the voyage otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days.

REVENUE ACT, 1903 (3 EDW. 7, c. 46).

Stamping of policies of insurance on ships under construction, &c.

8. A policy of insurance made or purporting to be made upon or to cover any ship or vessel, or the machinery or fittings belonging to the ship or vessel, whilst under construction or repair or on trial, shall be sufficiently stamped for the purposes of the Stamp Act, 1891, and the Acts amending that Act, if stamped as a policy of sea insurance made for a voyage; and though made for a time exceeding twelve months, shall not be deemed to be a policy of sea insurance made for time.

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